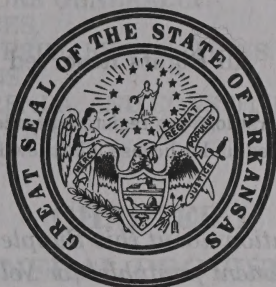


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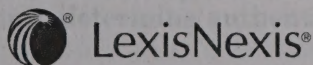
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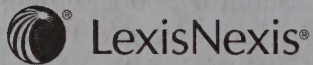
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TITLE 7

ELECTIONS

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CHAPTER 1

GENERAL PROVISIONS

SECTION.

- 7-1-101. Definitions.
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SECTION.

- 7-1-104. Miscellaneous felonies — Penalties.
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7-1-101. Definitions.

As used in this title, unless the context or chapter otherwise requires:

(1) "Administrator" means the administrative head of a long-term care or residential care facility licensed by the state who is authorized in writing by a patient of the long-term care or residential care facility to deliver the application for an absentee ballot and to obtain or deliver the absentee ballot to the county clerk;

(2) "Affidavit of eligibility" means an affidavit signed by a candidate for elective office stating that the candidate is eligible to serve in the office he or she seeks;

(3) "Audit log" means an electronically stored record of events and ballot images from which election officials may produce a permanent paper record with a manual audit capacity for a voting system using voting machines;

(4) "Authorized agent" means a person who is identified and authorized to deliver the application, obtain a ballot, and deliver the ballot on the day of the election to the county clerk for an applicant who is medically unable to cast a ballot at a polling site due to an unforeseen medical necessity as set forth in an affidavit from the administrator of a hospital or long-term care or residential care facility;

(5) "Canvassing" means examining and counting the returns of votes cast at a public election to determine authenticity;

(6) "Certificate of choice" means a certificate, signed by an executive officer of a political group that submits a petition to place its candidates for President and Vice-President on the ballot, designating the names of its candidates to appear on the ballot;

(7) "Constitutional officers of this state" means the offices of the Governor, Lieutenant Governor, Secretary of State, Attorney General, Auditor of State, Treasurer of State, and Commissioner of State Lands;

(8) "Counting location" means a location selected by the county board of election commissioners with respect to all elections for the automatic processing or counting, or both, of votes;

(9) "Designated bearer" means any person who is identified and authorized by the applicant to obtain from the county clerk or to deliver to the county clerk the applicant's ballot;

(10)(A) "Election media" means any device used in an election definition or to record votes cast with a direct record electronic machine or voting machine.

(B) "Election media" includes without limitation:

(i) Memory stick devices;

(ii) Digital flashcards;

(iii) Personalized electronic ballots (PEBs);

(iv) Personal computer cards; and

(v) Zip disks;

(11) "Election official" or "election officer" means a person who is a member of the county board of election commissioners, a person who performs election coordinator duties, a person who is a poll worker designated by a county board of election commissioners to be an election clerk, election judge, or election sheriff, or a deputy county clerk or a person assigned by a county clerk to conduct early voting;

(12) "Electronic poll book" means hardware or software or a combination of hardware and software that allows election officials to view voter registration records and voting information during an election at an early voting location or at a polling site on election day;

(13) "Electronic vote tabulating device" means a device used to electronically scan a marked paper ballot for the purpose of tabulation;

(14) "Fail-safe voting" means the mechanism established under the National Voter Registration Act of 1993, 52 U.S.C. § 20501 et seq., that allows a voter who has moved within the same county to vote at his or her new precinct without having updated his or her voter registration records;

(15) "First-time voter" means any registered voter who has not previously voted in a federal election in the state;

(16) "General or special election" means the regular biennial or annual election for election of United States, state, district, county, township, and municipal officials and the special elections to fill vacancies therein and special elections to approve any measure. The term as used in this act shall not apply to school elections for officials of school districts;

(17) "Infamous crimes" for the purposes of Arkansas Constitution, Article 5, § 9, includes:

- (A) A felony offense;
 - (B) A misdemeanor theft of property offense;
 - (C) Abuse of office, § 5-52-107;
 - (D) Tampering, § 5-53-110; or
 - (E) A misdemeanor offense in which the finder of fact was required to find, or the defendant to admit, an act of deceit, fraud, or false statement;
- (18) "Majority party" means that political party in the State of Arkansas whose candidates were elected to a majority of the constitutional offices of this state in the last preceding general election;
- (19) "Marking device" means any approved device operated by a voter to record the voter's choices through marking or creating a paper ballot with ink or other substance that will enable the votes to be tabulated by means of an electronic vote tabulating device;
- (20) "Member of the merchant marine" means:
- (A) An individual employed as an officer or crew member of:
 - (i) A vessel documented under the laws of the United States;
 - (ii) A vessel owned by the United States; or
 - (iii) A vessel of foreign-flag registry under charter or control of the United States;
 - (B) An individual enrolled with the United States for employment or training for employment or maintained by the United States for emergency relief service as an officer or crew member of any such vessel; or
 - (C) As defined in the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20301 et seq., if different from the definition stated in this subdivision (20);
- (21) "Minority party" means that political party whose candidates were elected to less than a majority of the constitutional offices of this state in the last preceding general election or the political party that polled the second greatest number of votes for the office of Governor in the last preceding general election if all of the elected constitutional officers of this state are from a single political party;
- (22)(A) "Nonpartisan candidate" means a candidate for the office of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, or prosecuting attorney.
- (B) "Nonpartisan candidate" does not include a candidate for nonpartisan municipal office;
- (23)(A) "Nonpartisan election" means a general, special, or runoff election for the office of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, or prosecuting attorney.
- (B) "Nonpartisan election" does not include a general, special, or runoff election for a nonpartisan municipal office;
- (24)(A) "Nonpartisan office" means the office of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, or prosecuting attorney.
- (B) "Nonpartisan office" does not include a nonpartisan municipal office;

(25) "Party certificate" means a written statement or receipt signed by the secretary or chair of the county committee or of the state committee, as the case may be, of the political party evidencing the name and title proposed to be used by the candidate on the ballot, the position the candidate seeks, payment of the fees, and filing of the party pledge, if any, required by the political party;

(26) "Party filing period" means the period of time established by law for the candidate for a political party's nomination to file his or her party certificate with the Secretary of State or county clerk, as the case may be;

(27)(A) "Political party" means any group of voters that at the last preceding general election polled for its candidate for Governor in the state or nominees for presidential electors at least three percent (3%) of the entire vote cast for the office.

(B) A group of electors shall not assume a name or designation that is so similar in the opinion of the Secretary of State to that of an existing political party as to confuse or mislead the voters at an election.

(C) When any political party fails to obtain three percent (3%) of the total votes cast at an election for the office of Governor or nominees for presidential electors, it shall cease to be a political party;

(28) "Polling site" means a location selected by the county board of election commissioners where votes are cast;

(29) "Precinct" means a geographical area, the boundaries of which are determined by a county board of election commissioners in order to facilitate voting by the registered voters from that geographical area;

(30) "Primary election" means any election held by a political party in the manner provided by law for the purpose of selecting nominees of the political party for certification as candidates for election at any general or special election in this state;

(31)(A) "Printed campaign materials" means:

(i) Literature mailed to an elector that is intended to or calculated to influence the vote of an elector in an election in this state, including without limitation signs, banners, flyers, and pamphlets; and

(ii) Yard signs and push cards intended to or calculated to influence the vote of an elector in an election in this state.

(B) "Printed campaign materials" does not mean political paraphernalia, including without limitation stickers, buttons, pens, T-shirts, nail files, or other similar trinkets;

(32) "Provisional ballot" means a ballot:

(A) Cast by special procedures to record a vote when there is some question concerning a voter's eligibility; and

(B) Counted contingent upon the verification of the voter's eligibility;

(33) "Qualified elector" means a person who holds the qualifications of an elector and who is registered pursuant to Arkansas Constitution, Amendment 51;

(34) "Sample ballot" means a ballot for distribution to the public or the press marked with the word "SAMPLE" so as to prevent the production of counterfeit ballots;

(35) "Uniformed services" means the United States Army, United States Navy, United States Air Force, United States Marine Corps, United States Coast Guard, the United States Commissioned Corps of the Public Health Service, and the National Oceanic and Atmospheric Administration Commissioned Officer Corps, or as defined in the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20301 et seq., if different from the definition stated in this subdivision (35);

(36) "Vacancy in election" means the vacancy in an elective office created by death, resignation, or other good and legal cause arising prior to election to the office at a general or special election but arising subsequent to the certification of the ballot;

(37) "Vacancy in nomination" means the circumstances in which:

(A) The person who received the majority of votes at the preferential primary election or general primary election cannot accept the nomination due to death or notifies the party that he or she will not accept the nomination due to serious illness, moving out of the area from which the person was elected as the party's nominee, or filing for another office preceding the final date for certification of nominations; or

(B) There is a tie vote for the same office at a general primary election;

(38)(A) "Vacancy in office" means the vacancy in an elective office created by death, resignation, or other good and legal cause arising subsequent to election to the office at a general or special election or arising subsequent to taking office and before the expiration of the term of office in those circumstances wherein the vacancy must be filled by a special election rather than by appointment.

(B) "Vacancy in office" does not apply to the election of a person at a general election to fill an unexpired portion of a term of office;

(39)(A) "Verification of voter registration" means:

(i) Presenting a document or identification card when appearing to vote in person that:

(a) Shows the name of the person to whom the document or identification card was issued;

(b) Shows a photograph of the person to whom the document or identification card was issued;

(c) Is issued by the United States, the State of Arkansas, or an accredited postsecondary educational institution in the State of Arkansas; and

(d) If displaying an expiration date, is not expired or expired no more than four (4) years before the date of the election in which the voter seeks to vote; or

(ii) Submitting with an absentee ballot verification of voter registration in the form of a copy of a document or identification card that

complies with the requirements of subdivision (39)(A)(i) of this section.

(B) A document or identification card may be presented in a digital format on an electronic device if the document or identification card:

(i) Complies with the requirements of subdivision (39)(A) of this section; and

(ii) The digital format has been approved or issued by the United States, the State of Arkansas, or an accredited postsecondary educational institution in the State of Arkansas.

(C) Documents and identification cards that comply with the requirements of subdivision (39)(A) of this section include without limitation:

(i) A driver's license;

(ii) A photo identification card;

(iii) A concealed handgun carry license;

(iv) A United States passport;

(v) An employee badge or identification document issued by an accredited postsecondary educational institution in the State of Arkansas;

(vi) A United States Armed Forces identification document;

(vii) A public assistance identification card if the card shows a photograph of the person to whom the document or identification card was issued; and

(viii) A voter verification card under § 7-5-324;

(40) "Vote center" means an election day location designated by the county board of election commissioners at which a qualified elector from any precinct in the county holding the election may vote;

(41) "Voter-verified paper audit trail" means a contemporaneous paper record of a ballot printed for the voter to confirm his or her votes before the voter casts his or her ballot that:

(A) Allows the voter to verify the voter-verified paper audit trail before the casting of the voter's ballot;

(B) Is not retained by the voter;

(C) Does not contain individual voter information;

(D) Is produced on paper that is sturdy, clean, and resistant to degradation; and

(E) Is readable in a manner that makes the voter's ballot choices obvious to the voter without the use of computer or electronic code;

(42) "Voting machine" means either:

(A) A direct-recording electronic voting machine that:

(i) Records votes by means of a ballot display provided with mechanical or electro-optical components that may be actuated by the voter;

(ii) Processes the data by means of a computer program;

(iii) Records voting data and ballot images in internal and external memory components; and

(iv) Produces a tabulation of the voting data stored in a removable memory component and on a printed copy; or

(B) One (1) or more electronic devices that operate independently or as a combination of a ballot marking device and an electronic vote tabulating device; and

(43) "Voting system" means:

(A) The total combination of mechanical, electromechanical, or electronic equipment, including the software, firmware, and documentation required to program, control, and support the equipment that is used to:

- (i) Define ballots;
- (ii) Cast and count votes;
- (iii) Report or display election results; and
- (iv) Maintain and produce any audit trail information; and

(B) The practices and documentation used to:

- (i) Identify system components and versions of components;
- (ii) Test the system during its development and maintenance;
- (iii) Maintain records of system errors and defects;
- (iv) Determine specific system changes to be made to a system after the initial qualification of the system; and
- (v) Make available any materials to the voter, including without limitation notices, instructions, forms, or paper ballots.

History. Acts 1969, No. 465, Art. 1, § 1; 1971, No. 261, § 1; 1977, No. 888, § 3; A.S.A. 1947, § 3-101; Acts 1987, No. 123, § 12; 1991, No. 241, § 1; 1995, No. 946, § 1; 1995, No. 963, § 1; 1997, No. 445, § 1; 1997, No. 1082, § 1; 1999, No. 1342, § 1; 2003, No. 994, § 1; 2003, No. 1731, § 1; 2005, No. 2233, § 2; 2007, No. 224, § 1; 2007, No. 1020, § 1; 2009, No. 250, § 1; 2009, No. 659, § 5; 2009, No. 959, § 2; 2009, No. 1480, § 14; 2011, No. 203, § 1; 2013, No. 595, § 1; 2013, No. 724, § 3; 2013, No. 1110, § 1; 2013, No. 1126, § 1; 2013, No. 1211, § 1; 2013, No. 1297, § 1; 2013, No. 1389, § 1; 2015, No. 1042, § 1; 2015, No. 1218, §§ 1-3; 2017, No. 633, § 4; 2017, No. 787, § 1; 2019, No. 684, § 2; 2021, No. 729, § 1.

A.C.R.C. Notes. Acts 2017, No. 787, § 3, as amended by Acts 2019, No. 222,

§ 1, provided: "Applicability. A candidate running for election to any public office who possesses or creates a campaign sign, campaign literature, or other printed campaign material that does not comply with this act is exempt from compliance with this act if the campaign sign, campaign literature, or other printed campaign material was created before the effective date of this act."

It is unclear when the exemption described in Acts 2019, No. 222 takes effect. The Uncodified Section 3 of Acts 2017, No. 787, which is being amended by Act 222, was in effect August 2017.

Amendments. The 2019 amendment inserted (39)(B) and redesignated former (39)(B) as (39)(C).

The 2021 amendment deleted "county clerk or" preceding "county board" in (40).

CASE NOTES

Infamous Crimes.

Candidate for circuit court judge was not disqualified from running due to his conviction for a violation of § 27-14-306, the fictitious motor vehicle tags statute, as misdemeanor "infamous crimes" under Ark. Const., Art. 5, § 9 and § 7-1-101 are misdemeanor offenses in which "the finder of fact was required to find, or the

defendant to admit, an act of deceit, fraud, or false statement", and the appellate court could not say that a violation of § 27-14-306 required a finding or admission of deceit, fraud, or false statement. *Weeks v. Thurston*, 2020 Ark. 64, 594 S.W.3d 23 (2020).

While deceit, fraud, or a false statement certainly can be present in a violation of

§ 27-14-306, a finder of fact is not required under the statute to find deceit, fraud, or a false statement. *Weeks v. Thurston*, 2020 Ark. 64, 594 S.W.3d 23 (2020).

7-1-103. Miscellaneous misdemeanor offenses — Penalties — Definitions.

(a) The violation of any of the following shall be deemed misdemeanors punishable as provided in this section:

(1) It shall be unlawful for any person to appoint or offer to appoint anyone to any office or position of trust or for any person to influence, attempt to influence, or offer to influence the appointment, nomination, or election of any person to office in consideration of the support or assistance of the person for any candidate in any election in this state;

(2)(A)(i) It shall be unlawful for any public servant, as defined in § 21-8-402, to devote any time or labor during usual office hours toward the campaign of any other candidate for office or for the nomination to any office.

(ii) Devoting any time or labor during usual office hours toward the campaign of any other candidate for office or for the nomination to any office includes without limitation the gathering of signatures for a nominating petition.

(B) It shall be unlawful for any public servant, as defined in § 21-8-402, to circulate an initiative or referendum petition or to solicit signatures on an initiative or referendum petition in any public office of the state, county, or municipal governments of Arkansas or during the usual office hours or while on duty for any state agency or any county or municipal government in Arkansas.

(C) It shall be unlawful for any public servant, as defined in § 21-8-402, to coerce, by threats or otherwise, any public employee into devoting time or labor toward the campaign of any candidate for office or for the nomination to any office;

(3)(A) It shall be unlawful for any public servant, as defined in § 21-8-402, to use any office or room furnished at public expense to distribute any letters, circulars, or other campaign materials unless such office or room is regularly used by members of the public for such purposes without regard to political affiliation. It shall further be unlawful for any public servant to use for campaign purposes any item of personal property provided with public funds.

(B) As used in subdivision (a)(3)(A) of this section, "campaign materials" and "campaign purposes" refer to:

(i) The campaign of a candidate for public office; and
(ii) Efforts to support or oppose a ballot measure, except as provided in § 7-1-111;

(4) It shall be unlawful for any person to assess any public employee, as defined in § 21-8-402, for any political purpose whatever or to coerce, by threats or otherwise, any public employee into making a subscription or contribution for any political purpose;

(5) It shall be unlawful for any person employed in any capacity in any department of the State of Arkansas to have membership in any

political party or organization that advocates the overthrow of our constitutional form of government;

(6) It shall be unlawful for any campaign banners, campaign signs, or other campaign literature to be placed on any cars, trucks, tractors, or other vehicles belonging to the State of Arkansas or any municipality, county, or school district in the state;

(7)(A)(i) All articles, statements, or communications appearing in any newspaper printed or circulated in this state intended or calculated to influence the vote of any elector in any election and for the publication of which a consideration is paid or to be paid shall clearly contain the words "Paid Political Advertisement", "Paid Political Ad", or "Paid for by" the candidate, committee, or person who paid for the message.

(ii) Both the persons placing and the persons publishing the articles, statements, or communications shall be responsible for including the required disclaimer.

(B)(i) All articles, statements, or communications appearing in any radio, television, or any other electronic medium intended or calculated to influence the vote of any elector in any election and for the publication of which a consideration is paid or to be paid shall clearly contain the words:

(a) "Paid political advertisement" or "paid political ad"; or

(b) "Paid for by", "sponsored by", or "furnished by" the true sponsor of the advertisement.

(ii) Both the persons placing and the persons publishing the articles, statements, or communications shall be responsible for including the required disclaimer;

(8)(A) An election official acting in his or her official capacity shall not do any electioneering:

(i) On election day or any day on which early voting is allowed;

(ii) In a building in which voting is taking place; or

(iii) Within one hundred feet (100') of the primary exterior entrance used by voters to a building in which voting is taking place.

(B) On early voting days and election day, a person shall not do any electioneering during voting hours:

(i) In a building in which voting is taking place;

(ii) Within one hundred feet (100') of the primary exterior entrance used by voters to a building in which voting is taking place; or

(iii) With persons standing in line to vote.

(C)(i) As used in this subdivision (a)(8), "electioneering" means the display of or audible dissemination of information that advocates for or against any candidate, issue, or measure on a ballot.

(ii) "Electioneering" includes without limitation the following:

(a) Handing out, distributing, or offering to hand out or distribute campaign literature or literature regarding a candidate, issue, or measure on the ballot;

(b) Soliciting signatures on a petition;

(c) Soliciting contributions for a charitable or other purpose;

- (d) Displaying a candidate's name, likeness, or logo;
 - (e) Displaying a ballot measure's number, title, subject, or logo;
 - (f) Displaying or dissemination of buttons, hats, pencils, pens, shirts, signs, or stickers containing electioneering information; and
 - (g) Disseminating audible electioneering information.
- (iii) "Electioneering" does not include:
- (a) The presentation of a candidate's identification by the candidate under Arkansas Constitution, Amendment 51, § 13; or
 - (b) The display of a ballot measure in the polling place as required under § 7-5-202;
- (9) No election official shall perform any of the duties of the position before taking and subscribing to the oath provided for in § 7-4-110;
- (10) No person applying for a ballot shall swear falsely to any oath administered by the election officials with reference to his or her qualifications to vote;
- (11) No person shall willfully cause or attempt to cause his or her own name to be registered in any other election precinct than that in which he or she is or will be before the next ensuing election qualified as an elector;
- (12) During any election, no person shall remove, tear down, or destroy any booths or supplies or other conveniences placed in any booth or polling site for the purpose of enabling the voter to prepare his or her ballot;
- (13) No person shall take or carry any ballot obtained from any election official outside of the polling room or have in his or her possession outside of the polling room before the closing of the polls any ballot provided by any county election commissioner;
- (14) No person shall furnish a ballot to any elector who cannot read informing him or her that it contains a name or names different from those that are written or printed thereon or shall change or mark the ballot of any elector who cannot read so as to prevent the elector from voting for any candidate, act, section, or constitutional amendment as the elector intended;
- (15) No election official or other person shall unfold a ballot or without the express consent of the voter ascertain or attempt to ascertain any vote on a ballot before it is placed in the ballot box;
- (16) No person shall print or cause to be printed any ballot for any election held under this act with the names of the candidates appearing thereon in any other or different order or manner than provided by this act;
- (17) No election official shall permit the vote of any person to be cast in any election precinct in this state in any election legally held in this state when the person does not appear in person at the election precinct and actually cast the vote. This subdivision (a)(17) shall not apply to persons entitled to cast absentee ballots;
- (18)(A) No person shall vote or offer to vote more than one (1) time in any election held in this state, either in person or by absentee ballot, or shall vote in more than one (1) election precinct in any election held in this state.

(B) No person shall cast a ballot or vote in the preferential primary of one (1) political party and then cast a ballot or vote in the general primary of another political party in this state;

(19) No person shall:

(A) Vote, knowing himself or herself not to be entitled to vote;

(B) Vote more than once at any election or knowingly cast more than one (1) ballot or attempt to do so;

(C) Provide assistance to a voter in marking and casting the voter's ballot except as provided in § 7-5-310;

(D) Alter or attempt to alter any ballot after it has been cast;

(E) Add or attempt to add any ballot to those legally polled at any election either by fraudulently introducing it into the ballot box before or after the ballots have been counted or at any other time or in any other manner with the intent or effect of affecting the count or recount of the ballots;

(F) Withdraw or attempt to withdraw any ballot lawfully polled with the intent or effect of affecting the count or recount of the ballots; or

(G) In any manner interfere with the officials lawfully conducting the election or the canvass or with the voters lawfully exercising their right to vote at the election;

(20) No person shall make any bet or wager upon the result of any election in this state;

(21) No election official, poll watcher, or any other person in or out of this state in any primary, general, or special election in this state shall divulge to any person the results of any votes cast for any candidate or on any issue in the election until after the closing of the polls on the day of the election. The provisions of this subdivision (a)(21) shall not apply to any township or precinct in this state in which all of the registered voters therein have voted prior to the closing of the polls in those instances in which there are fifteen (15) or fewer registered voters in the precinct or township;

(22) Any person, election official, county clerk, or deputy clerk who violates any provisions of the absentee voting laws, § 7-5-401 et seq., shall be punished as provided in this section;

(23) No person applying to be placed on a ballot for any public office shall knowingly provide false information with reference to his or her qualifications; and

(24) A person shall not enter or remain in an area within one hundred feet (100') of the primary exterior entrance to a building where voting is taking place except for a person entering or leaving a building where voting is taking place for lawful purposes.

(b)(1) Except as otherwise provided, the violation of any provision of this section shall be a Class A misdemeanor.

(2)(A) Any person convicted under the provisions of this section shall thereafter be ineligible to hold any office or employment in any of the departments in this state.

(B)(i) If any person is convicted under the provisions of this section while employed by any of the departments of this state, he or she shall be removed from employment immediately.

(ii) If any person is convicted under the provisions of this section while holding public office, the conviction shall be deemed a misfeasance and malfeasance in office and shall subject the person to impeachment.

(3) A person convicted of a misdemeanor offense as listed in this section shall be barred from serving as an election official in subsequent elections.

(c) Any violation of this act not covered by this section and § 7-1-104 shall be considered a Class A misdemeanor and shall be punishable as such.

History. Acts 1969, No. 465, Art. 11, § 4; 1970 (1st Ex. Sess.), No. 3, § 1; 1971, No. 261, § 24; 1981, No. 327, § 1; A.S.A. 1947, § 3-1104; Acts 1987, No. 395, § 1; 1989, No. 505, § 2; 1991, No. 241, § 2; 1991, No. 786, § 4; 1995, No. 497, § 1; 1995, No. 1085, § 1; 1997, No. 445, § 2; 1997, No. 1121, § 1; 1999, No. 553, § 1; 1999, No. 1525, § 1; 2001, No. 795, § 1; 2001, No. 926, § 1; 2001, No. 1839, § 1; 2005, No. 1284, § 1; 2007, No. 221, § 1; 2009, No. 310, § 1; 2009, No. 473, § 1;

2009, No. 658, § 1; 2011, No. 721, § 1; 2013, No. 312, § 1; 2019, No. 533, § 1; 2021, No. 416, § 1; 2021, No. 728, § 1; 2021, No. 974, § 1.

Amendments. The 2019 amendment rewrote (a)(8).

The 2021 amendment by No. 416 added (a)(23).

The 2021 amendment by No. 728 added (a)(24).

The 2021 amendment by No. 974 added (b)(3).

CASE NOTES

ANALYSIS

Preemption.

Unlawful Voting.

Preemption.

It is likely that § 7-5-310(b)(4)(B) and (b)(5), and subdivisions (a)(19) and (b)(1) of this section impermissibly narrow 52 U.S.C. § 10508's dictate that a voter may be assisted by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union. The timing of this motion prevented the court from granting plaintiffs the relief they sought (a temporary restraining order and/or preliminary injunction), as they had not offered any explanation why they waited until the night before the election to bring this suit. Ark. United v. Thurston, No. 5:20-CV-

5193, 2020 U.S. Dist. LEXIS 207145 (W.D. Ark. Nov. 3, 2020).

Unlawful Voting.

Circuit court properly declared an alderman-elect ineligible to run for public office because he had pled guilty to "voting more than once in an election" in violation of this section; the framers of Ark. Const., Art. 5, § 9 intended for an "infamous crime" to include crimes involving elements of deceit, dishonesty, impugning on the integrity of the office, and directly impacting the person's ability to serve as an elected official; and, with the inclusion of subdivision (b)(2)(A) of this section, the General Assembly deliberately chose to exclude from public office all persons found guilty of election-related misdemeanors, regardless of whether the record was later sealed. Pruitt v. Smith, 2020 Ark. 382, 610 S.W.3d 660 (2020).

7-1-104. Miscellaneous felonies — Penalties.

(a) The following offenses shall be deemed felonies punishable as provided in this section:

(1) No person shall falsely make or fraudulently destroy any certificate of nominations or any part thereof, file any certificate of nominations knowing the certificate or any part thereof to be false, suppress any nomination or any part thereof which has been filed, or forge or falsely write the name or initials of any election official on any ballot;

(2) No public official or other person shall in any manner willfully or corruptly permit any person not entitled to register for the purpose of voting to register, nor shall a public official or other person forge or attempt to forge a registration;

(3) No person shall vote in any election in the state unless the person is a qualified elector of this state and has registered to vote in the manner provided by law;

(4) It shall be unlawful for any person to offer, accept, receive, or pay any person any money, goods, wares, or merchandise or solicit any money, goods, wares, or merchandise for the purpose of influencing his or her vote during the progress of any election in this state;

(5) It shall be unlawful for any person to make any threat or attempt to intimidate any elector or the family, business, or profession of the elector;

(6) It shall be unlawful for any person to interfere with or to prevent any qualified elector from voting at any election or to attempt to interfere with or to prevent any qualified elector from voting at any election, provided that this subdivision (a)(6) shall not prohibit good faith challenges of ballots or voters according to law by candidates, authorized representatives of candidates, political parties, or ballot issues;

(7) It shall be unlawful for any person to attend any polling site on election day and hand out or give away any campaign cards, placards, or other articles for the purpose of influencing the electors to vote for any candidate, except in the manner now provided by law;

(8)(A) It shall be unlawful for a person with the intent to defraud a voter or an election official to possess an absentee ballot issued to another.

(B) The possession by a person of more than four (4) absentee ballots creates a rebuttable presumption of intent to defraud.

(C) The presumption under subdivision (a)(8)(B) of this section does not apply to:

(i) An employee of the United States Postal Service performing the normal course of the employee's authorized duties;

(ii) A common or contract carrier performing the normal course of the carrier's authorized duties;

(iii) The administrative head of a long-term care or residential care facility licensed by the state authorized by a voter under Arkansas law; or

- (iv) An election official acting in his or her official capacity;
- (9) No person shall tamper with a voting machine or fraudulently affect or attempt to affect its results;
- (10) No person may cast a ballot in more than one (1) party primary election on the same day in this state or for candidates for more than one (1) political party;
- (11) No person shall vote in any election more than one (1) vote;
- (12) No person shall vote or attempt to vote other than his or her legal ballot;
- (13) No election official shall knowingly permit any person to vote other than his or her legal ballot in any election;
- (14) No election official or other person shall fraudulently permit any person to vote illegally, refuse the vote of any qualified elector, or cast up or make a false return of any election;
- (15) No election official or other person shall willfully make a false count of any election ballots or falsely or fraudulently certify the returns of any election;
- (16) No person shall fraudulently change, alter, or obliterate the poll books or books of any election or break any seals upon any ballot box, voting machine, or stub box, except as authorized by law;
- (17) No person shall contrive, alter, forge, counterfeit, detain, mutilate, steal, secrete, or destroy any election returns or election materials for the purpose of hindering or preventing or falsely reporting a tabulation or check of the returns; and
- (18) Any person who violates the provisions of § 7-5-702 or who shall disclose how any voter may have voted unless compelled to do so in a judicial proceeding shall be deemed guilty of a Class D felony and punished as provided in this section.
- (b)(1) Any person convicted of a felony as defined in this section shall be guilty of a Class D felony.
- (2)(A) Any person convicted of a felony as defined in this section shall be barred from holding public office or employment in any of the departments of the state from the date of his or her conviction.
- (B)(i) If the person is employed by any of the departments of this state at the time of his or her conviction, he or she shall be removed from employment immediately.
- (ii) If any person is convicted under the provisions of this section while holding public office, the conviction shall be deemed a misfeasance and malfeasance in office and shall subject the person to impeachment.
- (c) A person convicted of a felony as listed in this section shall be barred from serving as an election official in subsequent elections.

History. Acts 1969, No. 465, Art. 11, § 5; A.S.A. 1947, § 3-1105; Acts 1995, No. 497, § 1; 1995, No. 1085, § 1; 1997, No. 445, § 3; 1999, No. 655, § 1; 2001, No. 1553, § 17; 2003, No. 1458, § 1; 2005, No.

1677, § 1; 2009, No. 658, § 2; 2021, No. 736, § 1; 2021, No. 974, § 2.

Amendments. The 2021 amendment by No. 736 substituted "four (4)" for "ten (10)" in (a)(8)(B).

The 2021 amendment by No. 974 added
(c).

7-1-109. Enforcement of election laws.

Following a written complaint concerning any election law violation or irregularity to the county board of election commissioners, the written complaint shall be sent by the county board of election commissioners to the State Board of Election Commissioners for evaluation.

History. Acts 2003, No. 270, § 1; 2021, No. 952, § 1. substituted “State Board of Election Commissioners” for “appropriate county clerk and appropriate prosecuting attorney”.

Amendments. The 2021 amendment

CHAPTER 3
POLITICAL PARTIES

SECTION.
7-3-101. Duties and powers.
7-3-103. State committee members.
7-3-104. County committee members.

SECTION.
7-3-105. County convention delegates —
Selection — Vacancy.

7-3-101. Duties and powers.

(a) Subject to the provisions of this act and other applicable laws of this state, organized political parties shall:

- (1) Prescribe the qualifications of their own membership;
 - (2) Prescribe the qualifications for voting in their party primaries;
- and
- (3) Establish rules and procedures for their own organization.

(b)(1) An organized political party shall provide current copies of its adopted rules and procedures to the Secretary of State and the State Board of Election Commissioners.

(2) The obligation under subdivision (b)(1) of this section is a continuing obligation, and as rules and procedures are amended the political party shall continue to provide updated and current copies of the rules and procedures.

History. Acts 1969, No. 465, Art. 1, § 2; 1971, No. 261, § 2; A.S.A. 1947, § 3-102; Acts 1995, No. 901, § 1; 2019, No. 648, § 1.

Amendments. The 2019 amendment added the (a) designation; substituted “Prescribe” for “Have the right to prescribe” in (a)(1); and added (b).

7-3-103. State committee members.

(a) The members of the state committee of political parties in this state shall be elected in accordance with respective political party rules.

(b) The term of office of the members of a state committee shall begin from their election, and they shall hold office until their successors are elected and qualified as provided under respective political party rules.

History. Acts 1969, No. 465, Art. 1, § 2; 1971, No. 261, § 2; A.S.A. 1947, § 3-102; Acts 2019, No. 648, § 2.

Amendments. The 2019 amendment substituted “in accordance with respective political party rules” for “by the respective state conventions” in (a); deleted (b), and

redesignated former (c) as (b); and substituted “until their successors are elected and qualified as provided under respective political party rules” for “until the next convention and until their successors are elected and qualified” in (b).

7-3-104. County committee members.

(a)(1) The members of the county committee of political parties from each election precinct, township, or city ward shall be elected in accordance with respective political party rules.

(2)(A) Except as provided in subdivision (a)(2)(B) of this section, the county board of election commissioners shall place on the ballot of the primary election the names of all persons seeking election as members of the county committee who have filed a written pledge to abide by the results of the primary, if any is required by the rules of the political party, and who have paid the filing fee, if any, assessed therefor.

(B) When only one (1) candidate qualifies for a particular position on the county committee, the candidate’s name shall be omitted from the ballot and the candidate shall be selected to serve in the particular position in the same manner as if the position had been voted upon at the primary election.

(3) If candidates for any county committee membership positions have not qualified as provided in this section within the time required for candidates to qualify, the county committee shall select candidates for committee members at any public meeting of the county committee held after the ticket has closed and prior to the time the primary election ballots are printed.

(4) Vacancies in the county committee shall be filled by the county committee.

(b)(1) Each person elected or appointed the county chair of the county committee of a political party shall notify the state chair of the respective party in writing within ten (10) days after his or her election or appointment.

(2)(A) It shall be the duty of the state party chair to keep on file with the Secretary of State a complete list of the county chairs and to notify promptly the Secretary of State of any death, resignation, disqualification, or vacancy in the office of any county chair and of the election of a new chair to fill vacancies thus created.

(B) Upon receipt of that information, the Secretary of State shall record the information, which shall be a public record.

History. Acts 1969, No. 465, Art. 1, § 3; A.S.A. 1947, § 3-103; Acts 1997, No. 444, § 1; 2005, No. 67, § 1; 2007, No. 222, § 2; 2019, No. 648, § 3.

Amendments. The 2019 amendment

substituted “in accordance with respective political party rules” for “by a majority vote of those votes cast for each membership position at the primary elections held by the political party” in (a)(1).

7-3-105. County convention delegates — Selection — Vacancy.

- (a) Delegates to the county convention shall be elected in accordance with respective political party rules.
- (b) The county committee may place on the ballot of the primary election the names of all persons seeking election as a county convention delegate who shall have filed a written pledge to abide by the results of the primary, if any is required by the rules of the political party, and shall have paid the ballot fee, if any, assessed therefor.
- (c) If candidates for county convention delegates have not qualified as herein provided within the time required for candidates to qualify, the county committee shall select candidates or delegates to the county convention at any public meeting of the committee held after the ticket has closed and prior to the time the primary election ballots are printed.
- (d) Any vacancies existing or occurring in any of the positions of delegates after the primary election or elections have been held may be filled by the county committee.

History. Acts 1969, No. 465, Art. 1, § 4; A.S.A. 1947, § 3-104; Acts 2019, No. 648, § 4.

Amendments. The 2019 amendment substituted “to the county convention shall be elected in accordance with respec-

tive political party rules” for “from each election precinct, township, or city ward to the county convention of political parties shall be selected at the primary election held by each party” in (a); and substituted “may place” for “shall place” in (b).

CHAPTER 4

BOARDS OF ELECTION COMMISSIONERS AND OTHER
ELECTION OFFICERS

SUBCHAPTER.

1. GENERAL PROVISIONS.

SUBCHAPTER 1 — GENERAL PROVISIONS	
SECTION.	SECTION.
7-4-101. State Board of Election Commissioners — Members — Officers — Meetings.	workers, and certified election monitors.
7-4-102. County boards of election commissioners — Election of members — Oath.	7-4-112. Compensation of election officials.
7-4-107. Duties of county board of election commissioners.	7-4-115. Legislative intent.
7-4-108. Absence of election officials — Filling vacancy.	7-4-116. Election poll workers program for high school students.
7-4-109. Qualifications of state and county commissioners, election officials, poll	7-4-120. Complaints of election law violations — Definitions.
	7-4-121. Election audits.
	7-4-122. County employees detailed as election official.

Effective Dates. Acts 2019, No. 376, § 14: Mar. 8, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act amends the process for circulating initiative petitions and referendum petitions; and that the provisions of this act should become effective immediately so that its provisions apply to all petitions circulated after the passage of the act to avoid confusion in petition circulation. Therefore, an emergency is declared to exist, and this act being immedi-

ately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto." The emergency clause for Acts 2019, No. 376 was held to be defective in *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403.

7-4-101. State Board of Election Commissioners — Members — Officers — Meetings.

(a) The State Board of Election Commissioners shall be composed of the following seven (7) persons, with at least one (1) from each congressional district:

- (1) The Secretary of State;
- (2) One (1) person designated by the chair of the state Democratic Party;
- (3) One (1) person designated by the chair of the state Republican Party;
- (4) One (1) person to be chosen by the President Pro Tempore of the Senate;
- (5) One (1) person to be chosen by the Speaker of the House of Representatives; and
- (6) Two (2) persons to be chosen by the Governor, one (1) of whom shall be a county clerk and one (1) of whom shall have served for at least three (3) years as a county election commissioner.

(b) The Secretary of State shall serve as the Chair of the State Board of Election Commissioners and the Secretary of the State Board of Election Commissioners.

(c) Except for the Secretary of State and the county clerk, no member of the State Board of Election Commissioners shall be an elected public official.

(d)(1) The term on the State Board of Election Commissioners of the Secretary of State shall be concurrent with his or her term in office.

(2) The county clerk shall hold the office of county clerk when appointed to the State Board of Election Commissioners and shall be removed as a member of the State Board of Election Commissioners if not in office.

(3)(A) Members of the State Board of Election Commissioners appointed by the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall be appointed for terms of two (2) years and shall continue to serve until successors have been appointed and taken the official oath.

(B) All other appointive members shall be appointed for terms of four (4) years and shall continue to serve until successors have been appointed and taken the official oath.

(4) No appointive member shall be appointed to serve more than two (2) consecutive full terms.

(5)(A) If a vacancy on the State Board of Election Commissioners occurs, a successor shall be appointed within thirty (30) days to serve the remainder of the unexpired term.

(B) The appointment shall be made by the official holding the office responsible for appointing the predecessor.

(e)(1) The State Board of Election Commissioners shall meet as needed upon call of the chair or upon written request to the chair of any four (4) members.

(2) A majority of the membership of the State Board of Election Commissioners shall constitute a quorum for conducting business.

(3) No sanctions shall be imposed without the affirmative vote of at least four (4) members of the State Board of Election Commissioners.

(4) A meeting of the State Board of Election Commissioners may be chaired and conducted by:

(A) The Chair of the State Board of Election Commissioners; or

(B)(i) A person designated by the Chair of the State Board of Election Commissioners to act as chair for the meeting.

(ii) If a person is designated by the Chair of the State Board of Election Commissioners under subdivision (e)(4)(B)(i) of this section:

(a) The designated person's presence shall count for a quorum to conduct business; and

(b) The designated person may vote in the meeting.

(f) The State Board of Election Commissioners shall have the authority to:

(1) Publish a candidate's election handbook, in conjunction with the office of the Secretary of State and the Arkansas Ethics Commission, which outlines in a readable and understandable format the legal obligations of a candidate and any other suggestions that might be helpful to a candidate in complying with state election law;

(2) Conduct statewide training for election officers and county election commissioners;

(3) Adopt all necessary rules regarding training referred to in subdivision (f)(2) of this section and develop procedures for monitoring attendance;

(4) Monitor all election law-related legislation;

(5) Formulate, adopt, and promulgate all necessary rules to assure even and consistent application of voter registration laws and fair and orderly election procedures;

(6)(A) Appoint at least one (1) certified election monitor to a county upon a signed, written request under oath filed with the State Board of Election Commissioners and a determination by the State Board of Election Commissioners that appointing a monitor is necessary.

(B) The State Board of Election Commissioners shall certify at least one (1) election monitor in each congressional district.

(C) Certified election monitors shall serve as observers for the purpose of reporting to the State Board of Election Commissioners on the conduct of the election.

(D) The State Board of Election Commissioners may allow for reasonable compensation for election monitors;

(7) Assist the county board of election commissioners in the performance of administrative duties of the election process if the State Board of Election Commissioners determines that assistance is necessary and appropriate;

(8)(A) Formulate, adopt, and promulgate all necessary rules to establish uniform and nondiscriminatory administrative complaint procedures consistent with the requirements of Title IV of the federal Help America Vote Act of 2002.

(B) The cost of compliance with Title IV of the federal Help America Vote Act of 2002 shall be paid from the fund established to comply with the federal Help America Vote Act of 2002;

(9) Investigate alleged violations, render findings, and impose disciplinary action according to § 7-4-120 for violations of election and voter registration laws, except as to § 7-1-103(a)(1)-(4), (6), and (7), and except for any matters relating to campaign finance and disclosure laws which the Arkansas Ethics Commission shall have the power and authority to enforce according to §§ 7-6-217 and 7-6-218;

(10) Examine and approve in accordance with §§ 7-5-503 and 7-5-606 the types of voting machines and electronic vote tabulating devices used in any election;

(11) Administer reimbursement of election expenses to counties in accordance with § 7-7-201(a) for primary elections, statewide special elections, and nonpartisan general elections;

(12) Consider the certification of the ballot title and popular name submitted on a statewide initiative petition or statewide referendum petition under § 7-9-111;

(13) Conduct post-election audits under § 7-4-121;

(14) Formulate, adopt, and promulgate rules to establish procedures for post-election audits conducted under § 7-4-121;

(15) Consider an appeal filed to challenge a reduction in the number of polling sites in a county by a county board of election commissioners under § 7-5-101; and

(16) Formulate, adopt, and promulgate rules for governing the appeal of a county board of election commissioners' reduction in the number of polling sites in a county under § 7-5-101.

(g) The Attorney General shall provide legal assistance to the State Board of Election Commissioners in answering questions regarding election laws.

(h)(1) The State Board of Election Commissioners may appoint a Director of the State Board of Election Commissioners, who may hire a staff.

(2) The director shall serve at the pleasure of the State Board of Election Commissioners.

(3) The State Board of Election Commissioners shall set the personnel policies in accordance with the Regular Salary Procedures and Restrictions Act, §§ 19-4-1601 and 21-5-101, and the Uniform Classification and Compensation Act, § 21-5-201 et seq.

History. Acts 1969, No. 465, Art. 5, §§ 2, 3; 1977, No. 783, § 1; A.S.A. 1947, §§ 3-502, 3-503; Acts 1993, No. 1092, § 1; 1995, No. 349, § 3; 1995, No. 352, § 3; 1995, No. 741, § 1; 1995, No. 929, § 1; 1995, No. 940, § 1; 1995, No. 1217, § 5; 1997, No. 647, § 1; 1999, No. 997, § 1; 2001, No. 1174, § 1; 2003, No. 994, § 14; 2003, No. 1161, § 1; 2005, No. 1827, § 1; 2007, No. 559, § 1; 2009, No. 250, § 2; 2013, No. 977, § 1; 2013, No. 1110, § 2; 2013, No. 1456, § 1; 2019, No. 376, § 2; 2019, No. 888, § 1; 2021, No. 1063, § 1.

A.C.R.C. Notes. Acts 2020, No. 21, § 7, provided: "TRANSFER OF FUNDS. If the State Board of Election Commissioners is required to pay the expenses for any state supported preferential primary election, general primary election, nonpartisan general election, statewide special election or special primary election and funds are not available to pay for such elections, the Director of the State Board of Election Commissioners shall certify to the Chief Fiscal Officer of the State the amount

needed to pay the expenses of the election(s). Upon the approval of the Chief Fiscal Officer of the State, the amount certified shall be transferred from the Budget Stabilization Trust Fund to the Miscellaneous Agencies Fund Account of the State Board of Election Commissioners. All unused funds transferred under this provision shall be transferred back to the Budget Stabilization Trust Fund at the end of each fiscal year. The Chief Fiscal Officer of the State shall initiate the necessary transfer documents to reflect all such transfers upon the fiscal records of the State Auditor, the State Treasurer and the Chief Fiscal Officer of the State.

"The provisions of this section shall be in effect from July 1, 2020 through June 30, 2021."

Amendments. The 2019 amendment by No. 376 added (f)(12).

The 2019 amendment by No. 888 added (f)(13) and (f)(14).

The 2021 amendment added (f)(15) and (f)(16).

CASE NOTES

ANALYSIS

Effective Date of 2019 Amendment.
Jurisdiction.

Effective Date of 2019 Amendment.

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was "to avoid confusion in petition circulation"; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376's new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner's referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

Jurisdiction.

Circuit court clearly had jurisdiction to hear a candidate's petition where she was challenging the eligibility of a competing Court of Appeals candidate. *Barrett v. Thurston*, 2020 Ark. 36, 593 S.W.3d 1 (2020).

7-4-102. County boards of election commissioners — Election of members — Oath.

(a)(1)(A) In January of each odd-numbered year following the election of county committee officers, members of the county board of election commissioners shall be elected by their respective county committees.

(B) A chair or secretary of a county political party shall not serve as a member of the county board of election commissioners.

(2) The membership of the county board of election commissioners shall be as follows:

(A) Two (2) members elected by the county committee of the majority party; and

(B) One (1) member elected by the county committee of the minority party.

(b)(1) Within ten (10) days of the date of selection to the county board of election commissioners, the chair or secretary of each county committee shall notify the county clerk in writing of the names and addresses of those selected to serve on the county board of election commissioners.

(2)(A) Upon receipt of the notice, the county clerk shall send to each of the county election commissioners, by registered mail, within thirty (30) days of selection as a county election commissioner, a notice to take and subscribe to the oath prescribed by the Arkansas Constitution.

(B) A county election commissioner shall take the oath before:

(i) A justice or judge of the:

(a) Supreme Court;

(b) Court of Appeals;

(c) Circuit court;

(d) District court; or

(e) County court;

(ii) The county clerk;

(iii) The clerk of the circuit court; or

(iv) A justice of the peace.

(3) The oath shall be filed in the office of the county clerk and the county clerk shall forward a duplicate to the Secretary of State.

(c) As soon as practicable following the election of members to the county board of election commissioners, the chair of the majority party of the county shall file with the county clerk and the Secretary of State a notice setting forth the names of the majority party's designated members of the county board of election commissioners, and the chair of the minority party shall file with the county clerk and the Secretary of State a notice setting forth the name of the minority party's member of the county board of election commissioners.

(d) The county board of election commissioners is deemed to consist of county officials, and its members shall be immune from tort liability pursuant to § 21-9-301.

(e) A member of the county board of election commissioners shall serve at the pleasure of his or her respective county committee, and a county committee may remove a member of the county board of election commissioners representing the county committee by majority vote of the county committee.

(f)(1) A vacancy on the county board of election commissioners shall be filled by the election of a new member by the county committee of the appropriate party.

(2)(A) The county committee shall elect a new member within forty-five (45) days of a vacancy.

(B) If the county committee fails to elect a new member within forty-five (45) days of a vacancy, the state chair of the appropriate party shall appoint a new member to the county board of election commissioners.

History. Acts 1969, No. 465, Art. 5, § 2; A.S.A. 1947, § 3-502; Acts 1987, No. 248, § 4; 1989, No. 522, § 1; 1989 (3rd Ex. Sess.), No. 73, § 1; 1993, No. 843, § 1; 1995, No. 1014, § 1; 1997, No. 647, § 2; 1999, No. 1422, § 2; 2007, No. 489, § 1; 2007, No. 559, § 2; 2011, No. 1056, § 1; 2019, No. 966, § 1; 2021, No. 1051, § 1.

Amendments. The 2019 amendment added the (a)(1)(A) designation; and added (a)(1)(B).

The 2021 amendment redesignated (b)(2) as (b)(2)(A); in (b)(2)(A), deleted “notice to appear before the clerk” preceding “within thirty (30) days”, and inserted “a notice” following “election commissioner”; added (b)(2)(B); and, in (b)(3), inserted “the county clerk shall forward” and deleted “forwarded” preceding “to the Secretary of State”.

7-4-107. Duties of county board of election commissioners.

(a) The county board of election commissioners shall:

(1) Ensure compliance with all legal requirements relating to the conduct of elections;

(2) Exercise its duties consistent with the training and materials provided by the State Board of Election Commissioners;

(3) Allocate a sufficient number of secure ballot boxes if voting is conducted using preprinted paper ballots for each polling site based on the number of votes cast at that polling site in the immediately preceding:

(A) Preferential primary election or general election if the election for which the secure ballot boxes are prepared is a preferential primary election or general election; and

(B) Special election if the election for which the secure ballot boxes are prepared is a special election;

(4) Allocate sufficient components of a voting system approved for use under § 7-5-301 for each polling site based on the number of votes cast at that polling site in the immediately preceding:

(A) Preferential primary election or general election if the election for which the components are prepared is a preferential primary election or general election; and

(B) Special election if the election for which the components are prepared is a special election;

(5) Appoint the requisite number of election officials at each site where voters present themselves to vote to ensure that there is a sufficient number of election officials at each site, based upon the votes in the immediately preceding comparable election; and

(6)(A) Supervise all election officials.

(B) The supervision of election officials may be delegated by an affirmative vote of a quorum of all members of the county board of election commissioners.

(b)(1) The county board of election commissioners shall select and appoint a sufficient number of election officials for each polling site as provided by subsection (a) of this section and perform the other duties prescribed not less than twenty (20) days preceding an election.

(2)(A) Each polling site shall have a minimum of two (2) election clerks, one (1) election judge, and one (1) election sheriff.

(B) The election judge shall serve as the poll supervisor.

(C)(i) All election officials at a polling site shall have completed training under § 7-4-109 within the twelve (12) months before the election.

(ii) The minority party election commissioner shall have the option to designate a number of election officials equal to one (1) less than the majority of election officials at each polling site, with a minimum of two (2) election officials at each polling site.

(iii) In the event that the county party representatives on the county board of election commissioners fail to agree upon any election official to fill an election post allotted to the respective party twenty (20) days before the election, the county board of election commissioners shall appoint the remaining election officials.

(c) The county board of election commissioners may permit election officials to work half-day or split shifts at the polls at any election so long as the requisite number of election officials is always present.

History. Acts 1969, No. 465, Art. 5, § 6 and Art. 7, § 3; 1971, No. 261, § 9; 1973, No. 157, § 6; A.S.A. 1947, §§ 3-506, 3-703; Acts 1993, No. 511, §§ 1, 2; 1997, No. 647, § 5; 1999, No. 1490, § 2; 2001, No. 562, § 1; 2001, No. 1822, § 2; 2005, No. 894, § 1; 2005, No. 1827, § 2; 2007, No. 222, § 3; 2007, No. 559, § 3; 2013, No. 1457, § 1; 2019, No. 966, § 2; 2021, No. 950, § 1.

Amendments. The 2019 amendment deleted “Ballot boxes — Voting booths —

Appointment of election officers” in the section heading; rewrote (a); substituted “The county board of election commissioners shall select” for “It shall be the duty of the county board of election commissioners to select” in (b)(1); added the (b)(2)(A) designation; inserted (b)(2)(B); rewrote the former second sentence of (b)(2) as (b)(2)(C)(i); added the (b)(2)(C)(ii) and (iii) designations; deleted former (c); and re-designated former (d) as (c).

The 2021 amendment added (a)(6).

7-4-108. Absence of election officials — Filling vacancy.

(a) If any election official is absent at the time fixed for the opening of the polls, the election judge shall immediately notify the county board of election commissioners of the vacancy.

(b) If the county board of election commissioners does not timely appoint a new election official, and fewer than three (3) election officials

are present at the opening of the polls, the election judge present shall appoint one (1) or more qualified persons to act as an election official until the county board of election commissioners appoints a new election official.

(c)(1) Except as provided in subdivision (c)(2) of this section, upon notification of the absent election official, at least one (1) member of the county board of election commissioners shall respond to the polling site and assist with the election until the new election official is appointed.

(2) If all three (3) of the members of the county board of election commissioners are assisting at other polling sites and the election judge does not timely appoint a qualified person, the other election officials present at the polling site shall appoint a qualified person to act as an election official until the county board of election commissioners appoints a new election official.

History. Acts 1969, No. 465, Art. 7, § 3; A.S.A. 1947, § 3-703; Acts 1997, No. 647, § 6; 2019, No. 966, § 3.

Amendments. The 2019 amendment added the (a) designation; rewrote (a); and added (b) and (c).

7-4-109. Qualifications of state and county commissioners, election officials, poll workers, and certified election monitors.

(a)(1) A member of the State Board of Election Commissioners, a county election commissioner, and an election official shall be a qualified elector of this state, able to read and write the English language, and shall not have been found guilty or pleaded guilty or nolo contendere to the violation of an election law of this state.

(2) An election official, as defined in § 7-1-101, shall not be a candidate for an office to be filled at an election while serving as an election official.

(3) A member of the county board of election commissioners shall not be disqualified from serving as a member of the county board of election commissioners by the appearance on the ballot as a candidate for a position in his or her political party.

(4) A person shall be eligible to serve as an election official if the person is married to or related within the second degree of consanguinity to a candidate running for office in the election who is unopposed and the person is appointed to serve as an election official at a polling place or vote center designated to serve a geographic area with a population of less than one thousand (1,000) qualified electors.

(b)(1) A member of a county board of election commissioners shall be a resident of the county in which he or she serves at the time of his or her appointment or election.

(2)(A) An election official shall be a resident of the precinct in which he or she serves at the time of his or her appointment.

(B) However, if at the time of posting election officials the county board of election commissioners votes unanimously and certifies to the county clerk that it is impossible to obtain a qualified election

official from any precinct in the county, another qualified citizen of the county may be designated to serve in the precinct.

(C) An election coordinator, deputy clerk, or person assigned by a county clerk to conduct early voting does not have to be a resident of the precinct or county in which he or she serves.

(c)(1) A person who is a paid employee of a political party or of a candidate for office on that county's ballot shall not be a member of a county board of election commissioners or an election official.

(2)(A) Except as provided in subdivision (c)(2)(B) of this section, a person serving on the county board of election commissioners shall not participate in the campaign of any candidate listed on a ballot or of a write-in candidate seeking election in that county that falls under the county board of election commissioners' jurisdiction or authority.

(B)(i) A member of the county board of election commissioners shall not:

- (a) Manage a campaign;
- (b) Perform labor for a campaign;
- (c) Solicit on behalf of a candidate or campaign;
- (d) Pass out or place handbills, signs, or other literature concerning a candidate's campaign;

(e) Assist a candidate's campaign at a rally or parade; or

(f) Display candidate placards or signs on an automobile.

(ii) A member of the county board of election commissioners may:

- (a) Make a financial contribution to a candidate;
- (b) Attend a political party's state, district, or county meeting where a candidate or issue advocate speaks as a member of the audience; or

(c) Participate in a political party convention.

(3) A person employed with a company that has a business dealing, contract, or pending contract with a county board of election commissioners to which he or she seeks appointment shall not be a candidate for the county board of election commissioners.

(d) A person shall not serve as an election official if:

(1) The person is married to or related within the second degree of consanguinity to a candidate running for office in the election; and

(2) Another person makes an objection to his or her service to the county board of election commissioners within ten (10) calendar days after posting the list of officials.

(e)(1) Prior to the regularly scheduled preferential primary election, each of the following shall attend election training coordinated by the State Board of Election Commissioners:

(A) A member of the county board of election commissioners;

(B) A county clerk or his or her designee;

(C) A poll worker;

(D) A certified election monitor; and

(E) A county election coordinator.

(2)(A) The State Board of Election Commissioners shall determine the method and amount of compensation for attending the training.

(B) A person required to receive the training shall take and pass an examination of essential skills as determined by the State Board of Election Commissioners to receive compensation.

(C) A person who passes an examination under subdivision (e)(2)(B) of this section shall receive a certificate of completion.

(D) The State Board of Election Commissioners shall promulgate rules under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., concerning the training requirements, materials, and examination of essential skills.

(3) A deputy county clerk, employee of the county clerk, or other worker who will assist with early voting may be trained by the county clerk or his or her designee.

(4)(A) A county board of election commissioners by a majority vote shall designate a person to attend the required training as a county election coordinator.

(B) The State Board of Election Commissioners shall not provide training or compensation for attending training to a county election coordinator if the county election coordinator has not been designated to take the required training by a county board of election commissioners.

(5)(A) The State Board of Election Commissioners shall identify at least one (1) person not employed by a county in any capacity each year, who shall receive the same training as a county election coordinator, and who shall receive compensation for attending training.

(B) The person identified by the State Board of Election Commissioners may be a state employee being cross-trained, or a person who is not a state employee that the State Board of Election Commissioners considers qualified to become an acting county election coordinator as a special employee of the State Board of Election Commissioners.

History. Acts 1969, No. 465, Art. 5, § 4, 2021, No. 1051, §§ 2-4; 2021, No. 1063, and Art. 13, § 5; 1971, No. 451, § 2; 1972 § 2.

(1st Ex. Sess.), No. 41, § 2; A.S.A. 1947, §§ 3-504, 3-1305; Acts 1987, No. 248, § 5; 1993, No. 715, §§ 1, 2; 1997, No. 647, § 7; 2001, No. 796, § 1; 2001, No. 1822, § 1; 2005, No. 894, § 1; 2005, No. 1827, § 3; 2007, No. 489, § 2; 2013, No. 1457, § 2; 2015, No. 1042, § 4; 2015, No. 1253, § 1; **Amendments.** The 2021 amendment by No. 1051 added (e)(1)(E); redesignated (e)(2) as (e)(2)(A), and added (e)(2)(B) through (e)(2)(D); and added (e)(4) and (e)(5). The 2021 amendment by No. 1063 added (a)(4).

7-4-112. Compensation of election officials.

(a) Except as provided under subsection (c) of this section, an election official shall receive a minimum of the prevailing federal minimum wage for holding an election, or such greater amount as may be appropriated.

(b) Except as provided in subsection (c) of this section and in addition to compensation under subsection (a) of this section, each election

official carrying election materials to and from the polling sites shall be allowed mileage at such rate as may be appropriated but not to exceed the rate prescribed for state employees in state travel rules.

(c)(1) An election official may work as a volunteer without pay or reimbursement as specified by the election official under this section if the election official signs an affidavit prescribed by the State Board of Election Commissioners stating that he or she does not wish to receive:

(A) Compensation for his or her work as an election official; or

(B) Reimbursement for mileage accrued in the course of his or her work as an election official.

(2) An election official may choose not to receive compensation or reimbursement, or both.

(3)(A) An election official who signs the affidavit indicating that he or she does not wish to be compensated or reimbursed shall not be compensated with money or anything of value for his or her work as an election official.

(B) Any paperwork or document required by a student election official's school to verify his or her assistance is not compensation or reimbursement under this section.

History. Acts 1969, No. 465, Art. 7, § 20; 1970 (1st Ex. Sess.), No. 11, § 1; 1983, No. 169, § 1; A.S.A. 1947, § 3-720; Acts 1997, No. 647, § 10; 2005, No. 67, § 2; 2019, No. 315, § 416; 2019, No. 539, § 1.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (b).

The 2019 amendment by No. 539 substituted "Except as provided under subsection (c) of this section, an election official shall receive" for "The election officials shall receive" in (a); substituted "Except as provided in subsection (c) and in addition to compensation under subsection (a) of this section" for "In addition" in (b); and added (c).

7-4-115. Legislative intent.

Due to the United States Eighth Circuit Court of Appeals ruling in *Jones v. Conway County, Arkansas*, 143 F.3d 417 (8th Cir. 1998), the status of county election commissioners as either county officials or state officials has become unclear. Because of this lack of clarity, there has been much confusion as to whether or not county election commissioners should have been or currently are immune from suit under the state's policy of tort immunity. It is the intent of the General Assembly to clarify the official status of county election commissioners. Prior to July 30, 1999, county election commissioners were state officials and, as such, were immune from suit pursuant to Arkansas Constitution, Article 5, § 20, and § 19-10-305. Upon July 30, 1999, county election commissioners are hereby deemed to be county officials and are immune from suit pursuant to § 21-9-301.

History. Acts 1999, No. 1422, § 1; 2019, No. 966, § 4.

deleted "recent" preceding "United States" in the first sentence.

Amendments. The 2019 amendment

7-4-116. Election poll workers program for high school students.

(a)(1) The county board of election commissioners may conduct a special election day program for high school students in one (1) or more polling places designated by the county board of election commissioners.

(2) The high school students shall be selected by the county board of election commissioners in cooperation with the local high school principal, the local 4-H club, the local Boy Scouts of America club, the local Girl Scouts of the United States of America club, or any other local organization for youth designated by the county board of election commissioners.

(3)(A) A high school student selected for this program who has not reached his or her eighteenth birthday by the election day in which he or she is participating shall be called an election page.

(B) A high school student selected for this program who has reached his or her eighteenth birthday by the election day in which he or she is participating and meets the qualifications in § 7-4-109 may be an election official.

(b) The program shall:

(1) Be designed to stimulate the students' interest in elections and registering to vote;

(2) Provide assistance to the officers of election; and

(3) Assist in the safe entry and exit of elderly voters and voters with disabilities from the polling place.

(c)(1) In this volunteer position, each student selected as an election page shall:

(A) Be granted an additional excused absence from school while working as an election page;

(B) Serve under the direct supervision of the election officials at his or her assigned polling place; and

(C) Observe strict impartiality at all times.

(2) If an election page has attended training provided by the county board of election commissioners, the election page may assist election officials with checking in voters, assisting voters with instructions regarding the operation of voting machines, guarding the ballot box, and other related duties.

(3) An election page shall be in a volunteer position and shall not receive any compensation for performing his or her duties.

(4) Before beginning any duties, an election page shall take, before an election official, the following oath:

"I, _____, do swear that I will perform the duties of an election page of this election according to law and to the best of my abilities, and that I will studiously endeavor to prevent fraud, deceit, and abuse, and that I will not disclose how any voter shall have voted, unless required to do so as a witness in a judicial proceeding or a proceeding to contest an election."

(d) Each student selected to be an election official shall:

- (1) Take the oath of the election officials in § 7-4-110;
- (2) Serve under the supervision of the appropriate county board of election commissioners;
- (3) Observe strict impartiality at all times; and
- (4) Be granted an additional excused absence from school while working as an election official.

History. Acts 2003, No. 242, § 1; 2005, No. 67, § 3; 2011, No. 1223, §§ 6, 7; 2013, No. 1322, §§ 5, 6; 2019, No. 328, § 1.

added "In this volunteer position" in the introductory language of (c)(1); rewrote (c)(2); redesignated (d)(1) as (d); and deleted (d)(2).

Amendments. The 2019 amendment

7-4-120. Complaints of election law violations — Definitions.

(a)(1) Except as provided in subdivision (a)(2) of this section, the State Board of Election Commissioners may investigate alleged violations, render findings, institute corrective actions, and impose sanctions according to this subchapter for violations of election and voter registration laws.

(2) The State Board of Election Commissioners shall not investigate alleged violations, render findings, or impose sanctions concerning violations of:

(A) The provisions of § 7-1-103(a)(1)-(4), (6), and (7); or

(B) Campaign finance and disclosure laws for which the Arkansas Ethics Commission has the duty and authority to investigate and sanction under §§ 7-6-217 and 7-6-218.

(b)(1) A complaint shall be filed with the State Board of Election Commissioners in writing no earlier than the date established by law for the delivery or mailing of absentee ballots to a voter and no later than thirty (30) days following the certification of an election by a county board of election commissioners of the following:

(A) An alleged violation of the laws regarding elections including without limitation:

- (i) Voter registration;
- (ii) Requests for absentee ballots;
- (iii) Delivery of absentee ballots;
- (iv) Casting of ballots;
- (v) Ballot tabulation;
- (vi) Certification of election results;
- (vii) Administration of an election;
- (viii) Election processes; or
- (ix) Conduct of an election; or

(B) The election or elections affected or associated with the complaint.

(C) A complaint may be referred to the State Board of Election Commissioners by the Joint Performance Review Committee and is not subject to the thirty (30) day filing requirement under subdivision (b)(1) of this section.

(2)(A) A complaint shall be signed by the complainant under penalty of perjury.

(B) If a complaint is referred to the State Board of Election Commissioners by the Joint Performance Review Committee under subdivision (b)(1)(C) of this section, the Chair of the Joint Performance Review Committee shall be the complainant.

(3)(A) A complaint shall clearly:

(i) Describe the alleged violation, including without limitation the supporting facts for the violation or incident;

(ii) State when or the approximate date that the alleged violation or incident occurred; and

(iii) State the location or locations of the alleged violation or incident.

(B)(i) The complaint may specify, suggest, or recommend a desired resolution to the complaint.

(ii) If the complaint is timely filed but does not specify the desired resolution of the complainant:

(a) The State Board of Election Commissioners may:

(1) Notify the complainant that a desired resolution is not specified;

(2) Inform the complainant that other formal or informal resolutions may be appropriate; and

(3) Inform the complainant that the State Board of Election Commissioners may initiate a lawful resolution, correction, or remedy as the State Board of Election Commissioners deems appropriate; and

(b) The complainant may file the additional information within ten (10) days from mailing of the notice.

(4)(A) If a complaint does not meet the requirements of this section, the complainant shall be notified that the complaint may be corrected by amendment in writing within ten (10) days and that a failure to make the necessary corrections shall result in the complaint's being dismissed.

(B) If a complaint is dismissed because it does not meet the requirements of this section, the State Board of Election Commissioners shall notify the complainant of the fact of dismissal.

(5) A person shall not file a frivolous complaint.

(6) If the complaint is referred to the State Board of Election Commissioners by the Joint Performance Review Committee, the complaint shall include:

(A) A report of the findings of the Joint Performance Review Committee, including any hearing testimony the Joint Performance Review Committee believes relevant; and

(B) The recommendations of the Joint Performance Review Committee that may be submitted to the State Board of Election Commissioners, including without limitation a recommendation:

(i) For a letter of reprimand to an election official;

(ii) For decertification as an election official in the next election cycle, including all associated primary and runoff elections;

(iii) That the State Board of Election Commissioners take over and conduct elections in the county in question if the violation or violations are considered severe by the Joint Performance Review Committee and would threaten a county's ability to conduct an equal, free, and impartial election, or the appearance of an equal, free, and impartial election; or

(iv) That state turnback funds be withheld from a county when the State Board of Election Commissioners conducts an election on behalf of a county and the county refuses to reimburse the State Board of Election Commissioners for expenses incurred.

(7)(A) If a complaint is filed as required by this section, the State Board of Election Commissioners shall investigate the alleged violation.

(B) Immediately upon beginning an investigation under this section, the State Board of Election Commissioners shall notify the person or persons under investigation of the fact of the investigation and the nature of the investigation.

(C) If at the conclusion of the investigation, the State Board of Election Commissioners finds that there is probable cause to believe there has been a violation of the voter registration laws or election laws, the State Board of Election Commissioners may set a public hearing.

(c)(1) The State Board of Election Commissioners shall maintain a record of all inquiries, investigations, and proceedings.

(2) Except as provided in subdivisions (c)(3) and (4) of this section, records under this section are exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., until:

(A) A hearing by the State Board of Election Commissioners is set; or

(B) The investigation by the State Board of Election Commissioners is closed by the State Board of Election Commissioners.

(3) The State Board of Election Commissioners shall disclose, through its members or staff, otherwise confidential information to proper law enforcement officers, agencies, and other entities as is necessary to conduct the investigation under this section.

(4) The records of the investigation upon which the State Board of Election Commissioners has based its findings shall be opened to public inspection thirty (30) days after the final adjudication in which the State Board of Election Commissioners makes a final decision.

(d)(1) If the State Board of Election Commissioners determines that the complaint can be addressed through documentary submissions and without a formal investigation, the State Board of Election Commissioners may address the complaint with documentary submissions.

(2) If the State Board of Election Commissioners determines that an investigation is necessary, the State Board of Election Commissioners shall provide to the person who is the subject of the complaint:

(A) A copy of the complaint if a copy has not previously been provided; and

(B) Instructions for filing a response.

(3) The State Board of Election Commissioners may:

(A) Administer oaths for the purpose of taking sworn statements from witnesses in the course of its investigations;

(B) Request the person who is the subject of the complaint to answer allegations in writing, produce relevant evidence, or appear in person before the State Board of Election Commissioners; and

(C)(i) Subpoena any person or the books, records, or other documents relevant to the investigation or inquiry.

(ii) The subpoena may direct any law enforcement officer of the county concerned or the Director of the Division of Arkansas State Police to seize any public record that is withheld.

(4) The State Board of Election Commissioners shall:

(A) Provide the person subpoenaed with reasonable notice of the subpoena and an opportunity to respond; and

(B) Advise the complainant and the person who is the subject of the complaint in writing of the final action of the State Board of Election Commissioners.

(e) If the State Board of Election Commissioners finds a violation of the voter registration laws or election laws under its jurisdiction, the State Board of Election Commissioners may:

(1) Issue a public letter of caution, warning, reprimand, or a conditional warning of consequences that shall be imposed if corrective action is not completed;

(2) Impose a fine of no less than twenty-five dollars (\$25.00) and no more than one thousand dollars (\$1,000) for a negligent, knowing, or intentional violation;

(3) Report the information obtained in the investigation and the findings and determinations of the State Board of Election Commissioners to the appropriate law enforcement authorities;

(4) Make expenditures and order payment of the costs of the investigation and hearing;

(5) Decertify an election official from appointment as an election official;

(6) Issue an order that the State Board of Election Commissioners shall take over and conduct elections in the county in question if the violation is considered severe by the State Board of Election Commissioners and would threaten either a county's ability to conduct an equal, free, and impartial election, or the appearance of an equal, free, and impartial election; or

(7) Combine any two (2) or more of the actions or sanctions authorized under this section.

(f) The State Board of Election Commissioners shall advise the complainant and the person who is the subject of the complaint of the:

(1) Finding of the State Board of Election Commissioners;

(2) Final action taken and sanctions issued by the State Board of Election Commissioners against a person associated with the complaint and a response thereto; and

(3) Reasons for the findings, final actions, and sanctions.

(g) The State Board of Election Commissioners shall maintain a record of all inquiries, investigations, and proceedings.

(h)(1) The State Board of Election Commissioners shall adopt rules concerning the imposition of fines under this section.

(2) If a person fails to pay the fines ordered by the State Board of Election Commissioners under this section, the State Board of Election Commissioners may obtain a judgment from a court for the amount of the fine imposed by filing suit in the:

(A) Pulaski County Circuit Court;

(B) Circuit court of the county in which the person resides; or

(C) Small claims division of a district court.

(3) The fee for filing of a suit in a circuit or district court in this state shall be waived for the State Board of Election Commissioners.

(4) All moneys received by the State Board of Election Commissioners in payment of fines shall be deposited into the State Treasury as general revenues.

(i)(1) The State Board of Election Commissioners shall conclude its investigation and take its final action under this section within one hundred eighty (180) days of the filing of a complaint.

(2) The State Board of Election Commissioners shall announce its final action as a final administrative decision.

(3) However, if the State Board of Election Commissioners fails to take its final action within one hundred eighty (180) days, the final administrative action shall be effective within one hundred eighty (180) days of the filing of the complaint.

(4) If the State Board of Election Commissioners holds a hearing under this section, the State Board of Election Commissioners shall conclude all actions under this section within two hundred forty (240) days.

(j) A final action of the State Board of Election Commissioners under this section is an adjudication for purposes of judicial review under § 25-15-212.

(k) As used in this section:

(1) "Election laws" means the United States Constitution, the Arkansas Constitution, and the statutes, final court decisions of general applicability, and rules of the United States and the State of Arkansas concerning elections conducted by county boards of election commissioners and the rules promulgated by the State Board of Election Commissioners under § 7-4-101 concerning elections conducted by county boards of election commissioners;

(2) "Frivolous" means clearly lacking any basis in fact or law; and

(3) "Voter registration laws" means those laws under the United States Constitution, the Arkansas Constitution, and the statutes, final court decisions, and rules promulgated by the United States and the State of Arkansas concerning voter registration laws.

History. Acts 2015, No. 1253, § 3; 2017, No. 247, § 1; 2021, No. 756, § 2; 2021, No. 974, §§ 3, 4.

A.C.R.C. Notes. Acts 2021, No. 756, § 1, provided: "Title. This act shall be known and may be cited as the 'Arkansas Balloting Integrity Act of 2021'."

Amendments. The 2021 amendment by No. 756 inserted "institute corrective actions" in (a)(1); rewrote (b)(1), (b)(3), and (b)(4)(A); inserted "or persons" in (b)(6)(B); substituted "shall" for "may" in (c)(3); added "if a copy has not previously been provided" in (d)(2)(A); added (d)(3)(C)(ii), and redesignated former (d)(3)(C) as (d)(3)(C)(i); added "or a condi-

tional warning of consequences that shall be imposed if corrective action is not completed" in (e)(1); added "Make expenditures and" in (e)(4); substituted "any two (2) or more of the actions or" for "any of the" in (e)(5) [now (e)(7)]; added "against a person associated with the complaint and a response thereto" in (f)(2); inserted (i)(2) and (3), and redesignated former (i)(2) as (i)(4); and rewrote (k)(1) and (k)(3).

The 2021 amendment by No. 974 rewrote former (b)(1) and (b)(2) as (b)(1); redesignated former (b)(3) as (b)(2); inserted (b)(3) [now (b)(6)]; and inserted (e)(5) and (e)(6), and redesignated former (e)(5) as (e)(7).

7-4-121. Election audits.

(a)(1) The State Board of Election Commissioners shall audit the results of each general election to ensure the integrity and accuracy of the voting process.

(2) When conducting a post-election audit of the election results, the State Board of Election Commissioners shall:

(A) Select by lot the counties, polling sites, early voting locations, and vote centers to be audited;

(B) Select a sufficient number of early voting locations, polling sites, and vote centers to obtain a meaningful sample;

(C) Select the counties to be audited no less than sixty (60) days following the date of the general election;

(D) Conduct the audit by using the voter-verified paper audit trail;

(E)(i) Compile a report detailing the findings of this audit.

(ii) The report filed under this subdivision (a)(2)(E):

(a) Is not a recount;

(b) Has no legal effect on the outcome of any election subject to the audit; and

(c) Shall be made public and disseminated to any person upon request; and

(F) Securely maintain any county election records obtained for the purpose of conducting an audit.

(3) The Secretary of State may, at his or her discretion, provide additional staff to assist in conducting any audit under this subsection.

(b)(1) The county clerk, county board of election commissioners, or other county election official for a county that is audited under this section shall provide documents, records, or access to election equipment requested by the State Board of Election Commissioners to the State Board of Election Commissioners upon request.

(2) If the county clerk, county board of election commissioners, or other county election official of the county willfully fails to comply with a request made under subdivision (b)(1) of this section, and the State Board of Election Commissioners is not able to obtain the requested

information through other means, the State Board of Election Commissioners may:

(A) Find that the county in violation of subdivision (b)(1) of this section has forfeited reimbursement of state-funded election expenses for a period of up to two (2) years; and

(B) Elect to withhold reimbursement of state-funded election expenses to the county for a period of up to two (2) years.

History. Acts 2019, No. 888, § 2.

7-4-122. County employees detailed as election official.

(a) A county employee detailed as an election official shall comply with directives of the county board of election commissioners in matters related to an election.

(b) A county board of election commissioners may assign to other election officials the supervision of election officials by an affirmative vote of a quorum of all members of the county board of election commissioners.

(c) A county board of election commissioners may not change a duty delegated to a county employee if that duty is expressly governed by state or federal law.

History. Acts 2021, No. 950, § 2.

CHAPTER 5

ELECTION PROCEDURE GENERALLY

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. PREELECTION PROCEEDINGS.
3. CONDUCT OF ELECTIONS.
4. ABSENTEE VOTING.
5. VOTING MACHINES.
6. PAPER BALLOTS AND ELECTRONIC VOTE TABULATING DEVICES.
7. RETURNS AND CANVASS.
8. ELECTION CONTESTS.
9. VOTING AND ELECTIONS TRANSPARENCY ACT OF 2017.

A.C.R.C. Notes. Acts 2019, No. 888, § 5, provided: "Application.

"(a)(1) The State Board of Election Commissioners shall conduct the initial audit of the results of the general election under this act after the 2020 general election as a pilot program.

"(2) For each election system utilizing a ballot marking device and tabulator in operation for the 2020 election, the State Board of Election Commissioners shall:

"(A) Conduct an audit of at least one (1) county with a population of more than one hundred thousand (100,000) people;

"(B) Conduct an audit of at least four (4) counties with a population of less than one hundred thousand (100,000) people; and

"(C) Conduct the audits in a manner that effectuates at least one (1) audit from a county in each of the congressional districts of this state.

“(b) The State Board of Election Commissioners shall develop a comprehensive plan to audit the state’s election equipment based on the experience gained through this pilot program.”

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

7-5-101. Precinct boundaries, polling sites, and vote centers — Establishment and alteration.

7-5-104. Election expenses — Allocation.

7-5-106. Runoff elections for county and municipal officers — Definition.

7-5-107. Use of voter registration lists by poll workers.

SECTION.

7-5-109. Computerized voter registration lists.

7-5-110. Registration lists for each ballot combination.

7-5-112. Secure voter registration for domestic violence victims — Definition.

7-5-101. Precinct boundaries, polling sites, and vote centers — Establishment and alteration.

(a)(1) The county board of election commissioners shall:

(A) Establish election precincts; and

(B)(i) Designate a polling site for each precinct.

(ii) A polling site may serve two (2) or more precincts, including parts of precincts.

(2) Except as provided in § 6-14-106, the designation of polling sites shall be by a unanimous vote of the members of the county board of election commissioners present.

(b)(1) The county board of election commissioners by order may alter the boundaries of existing election precincts and establish new ones.

(2) A precinct shall not be altered and a new precinct shall not be created less than sixty (60) days before an election except in the event of an emergency as determined by unanimous vote of the county board of election commissioners.

(3)(A) Except as provided in subdivision (b)(3)(B) of this section, if more than three thousand (3,000) voters are registered in a precinct, the county board of election commissioners shall redistrict the precinct at least one hundred twenty (120) days before the election.

(B) If the number of registered voters in the precinct exceeds three thousand (3,000) registered voters during or after the one hundred twenty (120) days before an election, the county board of election commissioners shall redistrict the precinct at least one hundred twenty (120) days before the next election.

(4)(A) An order to alter the boundaries of any precinct or establish any new one shall not be effective until it has been filed with the county clerk.

(B) The order shall contain:

(i) A written description of the boundaries of the precinct;

(ii) A printed map of the boundaries of the precincts altered or established; and

(iii) A digital map detailing the precinct boundaries altered or established in a format prescribed by the Arkansas Geographic Information Systems Office.

(c)(1) Within thirty (30) days after the boundaries of an election precinct are altered or a new election precinct is established, the county clerk shall submit written, printed, and digital copies of the map and boundaries required under subdivision (b)(4) of this section to the:

(A) Secretary of State; and

(B) Arkansas Geographic Information Systems Office.

(2) Upon receipt of the changes, the Secretary of State immediately shall forward a copy to the:

(A) Office of the Attorney General;

(B) Census State Data Center;

(C) Geographic Information Systems and Mapping Section of the Transportation Planning and Policy Division of the Arkansas Department of Transportation; and

(D) Arkansas Geographic Information Systems Office.

(3) The Secretary of State may:

(A) Designate each precinct in the state with a unique alphanumeric description that clearly references:

(i) The precinct designation assigned by the county board of election commissioners; and

(ii) The county in which the precinct exists;

(B) Create a map of the State of Arkansas that is divided by precinct; and

(C) Display the map with the alphanumeric precinct designations on the Secretary of State's internet website.

(d)(1) Except for school elections under § 6-14-106, the polling sites for each election shall be the same as those established for the immediately preceding general election unless changed by order of the county board of election commissioners.

(2)(A) The county board of election commissioners shall not change a polling site for any precinct less than sixty (60) days before a preferential primary election or general election, except in the event of an emergency.

(B) The county board of election commissioners shall not change a polling site for any precinct less than thirty (30) days before an election other than a preferential primary or general election, except in the event of an emergency.

(3)(A) Notice of a change made in a polling site shall be provided by posting information at the polling site used in the last election and by the county clerk mailing notice to affected registered voters at least fifteen (15) days before the election unless:

(i) The election is a school election;

(ii) The election is a special election; or

(iii) The change in polling sites is due to an emergency arising less than fifteen (15) days before the election.

(B) If the change in polling site occurs in a school election, special election, or due to an emergency arising less than fifteen (15) days

before the election, notice of a change made in the polling site shall be provided by posting information at the polling site used in the last election.

(4)(A) If the county board of election commissioners reduces the total number of polling sites available in the county in a preferential primary election or a general election, a qualified elector of the county may appeal the decision to close the polling site that adversely affects the qualified elector's ability to cast a ballot to the State Board of Election Commissioners.

(B) An appeal made to the State Board of Election Commissioners shall:

(i) Be filed in writing within seven (7) days of the vote of the county board of election commissioners to reduce the number of polling sites available in the county;

(ii) Describe clearly the polling site that was closed;

(iii) Describe the reason the closure of the polling site in question adversely affects the election process; and

(iv) Be signed by the appellant under penalty of perjury.

(C) When a timely and sufficient appeal is filed under this subsection, the State Board of Election Commissioners shall determine if the reduction in polling sites is permissible in a timely fashion and shall issue an order resolving the appeal no less than thirty (30) days before the date of the election.

(D) An order by the State Board of Election Commissioners prohibiting a reduction in polling sites under this subsection shall be effective for the remainder of the term of the county board of election commissioners whose actions were appealed.

(e)(1)(A) Before establishing one (1) or more vote centers in the county under § 7-1-113, the county board of election commissioners shall certify to the Secretary of State and the county quorum court that the county has a secure electronic connection sufficient to prevent:

(i) An elector from voting more than once;

(ii) Unauthorized access to an electronic pollbook;

(iii) Unauthorized access to the voter registration database; and

(iv) Unauthorized access to voting equipment and voter materials.

(B) If the county board of election commissioners has certified to the county quorum court a determination of sufficiency under subdivision (e)(1)(A) of this section, the county may adopt an ordinance to establish vote centers for elections.

(C) The ordinance:

(i) Shall be filed with the county clerk, the county board of election commissioners, and the Secretary of State; and

(ii) Is effective when it is filed with the county clerk, the county board of election commissioners, and the Secretary of State.

(2)(A) Except for school elections under § 6-14-106, a vote center location for each election shall be the same as that established for the immediately preceding general election unless changed by order of the county board of election commissioners.

(B) The county board of election commissioners shall not change a vote center location for any precinct less than thirty (30) days before an election except in the event of an emergency.

(C) Notice of a change made to a vote center location shall be posted at the vote center location used in the last election, and except for school elections and special elections, the notice shall be published in a newspaper of general circulation in the county at least fifteen (15) days before the election.

History. Acts 1969, No. 465, Art. 6, § 1; A.S.A. 1947, § 3-601; Acts 1993, No. 717, §§ 1, 3; 1995, No. 876, § 1; 1995 (1st Ex. Sess.), No. 7, § 1; 1997, No. 451, § 1; 1999, No. 455, § 1; 2003, No. 1165, § 2; 2003, No. 1295, § 2; 2007, No. 694, § 1; 2009, No. 250, § 3; 2009, No. 1480, § 15; 2013, No. 546, § 1; 2013, No. 1126, § 4; 2013, No. 1211, § 2; 2013, No. 1389, § 3; 2015, No. 103, § 8; 2017, No. 707, § 8; 2021, No. 729, §§ 2, 3; 2021, No. 1063, §§ 3-5.

Amendments. The 2021 amendment by No. 729 substituted “county board of election commissioners” for “county clerk”

in the introductory language of (e)(1)(A) and in (e)(1)(B); substituted “an electronic pollbook” for “a computerized registration book maintained by the county clerk” in (e)(1)(A)(ii); added (e)(1)(A)(iii) and (e)(1)(A)(iv); and deleted “county clerk or” preceding “county board” in (e)(2)(A) and (e)(2)(B).

The 2021 amendment by No. 1063 redesignated (d)(2) as (d)(2)(A); in (d)(2)(A), substituted “sixty (60) days” for “thirty (30) days” and substituted “a preferential primary election or general election” for “an election”; and added (d)(2)(B) and (d)(4).

7-5-104. Election expenses — Allocation.

(a)(1) All expenses of general elections and runoff elections for presidential, congressional, state, district, county, township, or municipal offices in this state shall be paid by the counties in which they are held.

(2) However, any city or incorporated town shall reimburse the county board of election commissioners for the expenses of the elections in an amount equal to a figure derived by multiplying fifty percent (50%) of the total cost of each election by a fraction, the numerator of which shall be the number of voters from the city or incorporated town casting ballots in each election prepared by the county board of election commissioners, and the denominator of which shall be the total number of voters casting ballots in each election.

(b)(1) Except for the expense of party primary elections under § 7-7-201 et seq., all expenses for special elections, including runoff elections as required by law, for congressional, state, district, county, and township offices shall be paid by the counties in which they are held.

(2) All expenses of special elections, including any runoff elections as required by law, for municipal offices shall be paid by the city or incorporated town calling for the elections.

(3) All expenses of special elections called by any county for the purpose of referring a question or measure to the voters of the county shall be paid by the county.

(4) All expenses of special elections called by any city or incorporated town for the purpose of referring a question or measure to the voters of

the city or incorporated town shall be paid by the city or incorporated town.

(c)(1) The county board of election commissioners shall determine the expenses necessary to conduct a free, equal, and lawful election in order to comply with the United States Constitution, laws of the United States, the Arkansas Constitution, and the laws of the State of Arkansas.

(2) The county board of election commissioners shall:

(A) Prepare an election budget estimate of the expenses of all anticipated elections for the fiscal year of the county; and

(B) Transmit the election budget estimate during the same time and in the same manner as is required of other county departments and county elected officials in writing to:

(i) The county judge;

(ii) The county judge's designated comptroller or budget director;
or

(iii) A person as may be directed by the county judge.

(3) The election budget estimate shall include without limitation the following cost of:

(A) The salaries and expenses of:

(i) Full-time employees with positions relating to elections; and

(ii) Additional permanent, temporary, seasonal, or part-time employees to include without limitation:

(a) Poll workers; and

(b) Election officials;

(B) Equipment;

(C) Supplies;

(D) Publication costs;

(E) Maintenance;

(F) Utilities;

(G) Insurance;

(H) Taxes;

(I) Other direct expenses to conduct elections during the calendar year following an appropriation by the quorum court; and

(J) Indirect expenses of conducting elections during the calendar year following appropriation by the quorum court.

(4) If the county board of election commissioners determines that an elected county official has made an appropriate determination of expenses necessary to conduct elections and has previously prepared a budget estimate of the expenses for all anticipated elections for the fiscal year of the county, the county board of election commissioners may fulfill its duties by identifying and requesting line item budget support in the formal budget and appropriation of the elected county official, by majority vote of the county board of election commissioners, as set forth in its minutes annually.

(5) If the county board of election commissioners determines that the expenses necessary to conduct free, equal, and lawful elections can be met through in-kind support from other county departments, agencies,

and resources, the county board of election commissioners may accept in-kind support and resources under the terms and conditions as may be acceptable to the county board of election commissioners.

(d) No county board of election commissioners shall take or accept any funding, grants, or gifts from any source other than from:

- (1) A city or incorporated town;
- (2) The governing authority of the county;
- (3) The State of Arkansas; or
- (4) The United States Government.

History. Acts 1992 (1st Ex. Sess.), No. 67, § 2; 2005, No. 1205, § 1; 2021, No. 756, § 3; 2021, No. 961, § 1.

A.C.R.C. Notes. Acts 2021, No. 756, § 1, provided: "Title. This act shall be known and may be cited as the 'Arkansas

Balloting Integrity Act of 2021'."

Amendments. The 2021 amendment by No. 756 inserted "and runoff elections" in (a)(1); and added (c).

The 2021 amendment by No. 961 added (c) [now (d)].

7-5-106. Runoff elections for county and municipal officers — Definition.

(a)(1) If there are more than two (2) candidates for election to any county elected office, including the office of justice of the peace, at any general election held in this state and no candidate for the county elected office receives a majority of the votes cast for the county elected office, there shall be a runoff general election held in that county four (4) weeks following the date of the general election at which the names of the two (2) candidates receiving the highest number of votes, but not a majority, shall be placed on the ballot to be voted upon by the qualified electors of the county.

(2)(A) The following procedure will govern if there are more than two (2) candidates for election to any municipal office at any general election held in this state in which no candidate for the municipal office receives either:

- (i) A majority of the votes cast; or
- (ii) A plurality of forty percent (40%) of the votes cast.

(B)(i) A candidate who receives a plurality of forty percent (40%) of the votes cast must obtain at least twenty percent (20%) more of the votes cast than the second-place candidate for the municipal office to avoid a runoff general election against the second-place candidate.

(ii) If required, the runoff general election between the two (2) candidates shall be held in that municipality four (4) weeks following the date of the general election with the names of the two (2) candidates placed on the ballot to be voted upon by the qualified electors of the municipality.

(b) If two (2) candidates receive the highest number of votes and receive the same number of votes, a tie is deemed to exist and the names of the two (2) candidates shall be placed on the runoff general election ballot to be voted upon by the qualified electors of the county or the municipality, as the case may be.

(c)(1) If there is one (1) candidate who receives the highest number of votes, but not a majority of the votes, and two (2) other candidates receive the same number of votes for the next highest number of votes cast, a tie is deemed to exist between the two (2) candidates.

(2) The county board of election commissioners shall determine the runoff candidate by lot at a public meeting and in the presence of the two (2) candidates.

(d) If one (1) of the two (2) candidates who received the highest number of votes for a county elected office or a municipal office but not a majority of the votes in a county for a county elected office or either a majority or both forty percent (40%) of the votes cast and at least twenty percent (20%) more of the votes cast than the second-place candidate in a municipality for a municipal office in the general election withdraws before certification of the result of the general election, the remaining candidate who received the most votes at the general election shall be declared elected to the county elected office or municipal office and there shall be no runoff general election.

(e)(1) The person receiving the majority of the votes cast for the county elected office or municipal office at the runoff general election shall be declared elected.

(2) However, if the two (2) candidates seeking election to the same county elected office or municipal office receive the same number of votes in the runoff general election, a tie is deemed to exist, and the county board of election commissioners shall determine the winner of the runoff general election by lot at an open public meeting and in the presence of the two (2) candidates.

(f)(1) As used in this section, "municipal office" means offices of cities of the first class and cities of the second class and incorporated towns and includes the offices of council members, members of boards of managers, or other elective municipal offices elected by the voters of the entire municipality or from wards or districts within a municipality.

(2) "Municipal office" does not include offices of cities having a city manager form of government.

(g) This section does not apply to election of members of the boards of directors and other officials of cities having a city manager form of government.

(h) This section is intended to be in addition to and supplemental to the laws of this state pertaining to the election of officers for county elected offices and municipal offices at general elections.

History. Acts 1983, No. 909, §§ 1, 2; A.S.A. 1947, §§ 3-616, 3-617; Acts 1991, No. 53, § 1; 1997, No. 451, § 3; 1999, No. 554, § 1; 2003, No. 1165, § 3; 2007, No. 1049, § 14; 2011, No. 1211, § 1; 2017, No.

879, § 1; 2017, No. 1104, § 2; 2019, No. 207, § 1.

Amendments. The 2019 amendment substituted "four (4) weeks" for "three (3) weeks" in (a)(1).

7-5-107. Use of voter registration lists by poll workers.

(a)(1) In any election conducted in this state, precinct voter registration lists shall be used by poll workers in each polling place.

(2)(A) An electronic poll book may be used by poll workers in each polling place.

(B) The functions of an electronic poll book may include without limitation:

(i) Voter lookup;

(ii) Voter verification;

(iii) Voter identification;

(iv) Precinct assignment;

(v) Ballot assignment;

(vi) Recording when a voter presents himself or herself to an election official and requests a ballot;

(vii) Redirecting voters to the correct polling site; and

(viii) Determining if a voter has requested an absentee ballot.

(b) Precinct voter registration lists shall contain the name, address including zip code, and date of birth of each registered voter within the precinct, including those who have been designated inactive, the precinct number and county wherein the precinct is located, the name and date of the election, and a space for the voter's signature.

(c) The following shall be printed at the top of each page of the precinct voter registration list:

"IF YOU SIGN THIS FORM AND YOU ARE NOT A LAWFULLY REGISTERED VOTER OR IF YOU HAVE SUBMITTED AN ABSENTEE BALLOT FOR THIS ELECTION, YOU ARE MAKING A FALSE STATEMENT AND MAY BE COMMITTING PERJURY. PERJURY IS PUNISHABLE BY UP TO A \$10,000 FINE AND UP TO 10 YEARS IMPRISONMENT."

History. Acts 1993, No. 487, § 1; 1995, No. 946, § 2; 1995, No. 963, § 2; 2009, No. 959, § 3; 2013, No. 1297, § 2; 2021, No. 1063, § 6.

added (a)(2)(B)(viii); and inserted "OR IF YOU HAVE SUBMITTED AN ABSENTEE BALLOT FOR THIS ELECTION" in (c).

Amendments. The 2021 amendment

7-5-109. Computerized voter registration lists.

(a)(1) The county clerks of the several counties of the state may reproduce the registered voter list maintained by the county clerk in any format that the office of the county clerk is capable of providing.

(2) The county clerks of the several counties of the state shall not reproduce any address of a secure voter in any format unless otherwise authorized by law.

(b) The county clerks shall be entitled to a fee in connection with the preparation of any registered voter list that shall reimburse the county clerk for reproduction expenses. The value of office equipment previously secured for the office of the county clerk shall not be considered when determining the amount of this fee.

(c)(1)(A) Upon request every county clerk who maintains on computer the list of registered voters within the county shall provide the list on compact disc or other electronic medium, except the address of registered voters whose information is contained as a secure voter.

(B) The list of registered voters, excluding the addresses of registered voters listed as secure voters, shall include at least the names, addresses, and precinct numbers of the voters.

(2)(A) The fee for a list of registered voters, excluding the addresses of registered voters listed as secure voters, on compact disc or other electronic medium, of one (1) to five thousand (5,000) registered voters may be up to ten dollars (\$10.00).

(B) The fee for a list of registered voters, excluding the addresses of registered voters listed as secure voters, on compact disc or other electronic medium, of five thousand one (5,001) to twenty-five thousand (25,000) registered voters may be up to twenty-five dollars (\$25.00).

(C) The fee for a list of registered voters, excluding the addresses of registered voters listed as secure voters, on compact disc or other electronic medium, of more than twenty-five thousand (25,000) registered voters may be up to fifty dollars (\$50.00).

(3) If a printed list of registered voters, excluding the addresses of registered voters listed as secure voters, is requested, the cost of the list may be no more than two cents (2¢) per name and address.

History. Acts 1993, No. 1161, § 1; 1995, No. 924, § 2; 1995, No. 937, § 2; 1997, No. 451, § 5; 1999, No. 651, § 1; 2013, No. 1126, § 5; 2021, No. 980, §§ 1, 2.

Amendments. The 2021 amendment redesignated (a) as (a)(1); added (a)(2);

added “except the address of registered voters whose information is contained as a secure voter” in (c)(1)(A); and inserted “of registered voters, excluding the addresses of registered voters listed as secure voters” throughout (c)(1)(B), (c)(2), and (c)(3).

7-5-110. Registration lists for each ballot combination.

In any precinct with more than one (1) ballot combination, the county clerk shall prepare precinct voter registration lists of registered voters, excluding the addresses of registered voters listed as secure voters, that identify the district, subdistrict, county, municipality, ward, and school zone in which each voter is qualified to vote.

History. Acts 1995, No. 672, § 1; 1997, No. 451, § 6; 2021, No. 980, § 3.

Amendments. The 2021 amendment

inserted “of registered voters, excluding the addresses of registered voters listed as secure voters”.

7-5-112. Secure voter registration for domestic violence victims — Definition.

(a) A registered voter who is a victim of domestic violence may request secure voter status for his or her voter registration information.

(b) A registered voter designated as a secure voter is required to comply with all voter identification requirements when casting a ballot.

(c) Any address information for a secure voter is confidential and is not a public record under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(d) The Secretary of State shall promulgate rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to implement the process by which a registered voter who is the victim of domestic violence may request secure voter status from the county clerks, including without limitation the:

(1) Administrative process a county clerk shall use to verify eligibility for secure voter status;

(2) Documentation required for domestic violence victims to be approved for secure voter status;

(3) Format in which the county clerk shall maintain any addresses of all registered voters listed on the voter registration roll when the registered voter has a secure voter status; and

(4) Process for complying with a post-election challenge involving a secure voter.

(e) As used in §§ 7-5-109 and 7-5-110 and this section, "secure voter" means a registered voter who requests to have his or her address or addresses protected from public release and is a domestic violence victim who:

(1) Is the victim of any offense under § 5-26-301 et seq. as adjudicated by a court;

(2) Has been granted an order of protection under the Domestic Abuse Act of 1991, § 9-15-101 et seq.; or

(3) Is recognized as a victim of domestic violence in any court order or ruling.

History. Acts 2021, No. 980, § 4.

SUBCHAPTER 2 — PREELECTION PROCEEDINGS

SECTION.

7-5-201. Voter qualification.

7-5-202. Public notice of elections.

7-5-205. Write-in candidates' votes —
When counted.

SECTION.

7-5-206. Publication requirements.

7-5-207. Ballots — Names included —
Draw for ballot position.

Effective Dates. Acts 2019, No. 597, § 10, July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is a need for uniform candidate filing and petition circulation periods; that if there is a delay in implementation, some candidate filing and petition circulation periods may be disrupted by the change in the middle of a

candidate's campaign; and that this act should become effective before candidates begin circulating petitions and filing for candidacy in the 2019 November annual school elections. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

7-5-201. Voter qualification.

(a) To be qualified to vote, a person shall have registered at least thirty (30) calendar days immediately prior to the election and in the manner set forth by Arkansas Constitution, Amendment 51.

(b) "Voting residence" shall be a voter's domicile and shall be governed by the following provisions:

(1) The domicile of a person is that place in which his or her habitation is fixed and to which he or she has the intention to return whenever he or she is absent;

(2) A change of domicile is made only by the act of abandonment, joined with the intent to remain in another place. A person can have only one (1) domicile at any given time;

(3) A person does not lose his or her domicile if he or she temporarily leaves his or her home and goes to another country, state, or place in this state with the intent of returning;

(4) The place where a person's family resides is presumed to be his or her place of domicile, but a person may acquire a separate residence if he or she takes another abode with the intention of remaining there;

(5) A married person may be considered to have a domicile separate from that of his or her spouse for the purposes of voting or holding office. For those purposes, domicile is determined as if the person were single; and

(6) Persons who are temporarily living in a particular place because of a temporary work-related assignment or duty post or as a result of their performing duties in connection with their status as military personnel, students, or office holders shall be deemed residents of that place where they established their home prior to beginning such assignments or duties.

(c) No person may be qualified to vote in more than one (1) precinct of any county at any one (1) time.

(d)(1) Except as provided in subdivision (d)(2) of this section and subsection (e) of this section, any person desiring to vote in this state shall:

(A) Present verification of voter registration to the election official when appearing to vote in person either early or at the polls on election day; or

(B) When voting by absentee ballot, submit with the ballot verification of voter registration unless the voter is:

(i) An active duty member of the uniformed services of the United States who is absent from the county on election day because of his or her service;

(ii) A member of the United States Merchant Marine who is absent from the county on election day because of his or her service in the United States Merchant Marine;

(iii) The spouse or dependent of a member identified in subdivision (d)(1)(B)(i) or subdivision (d)(1)(B)(ii) of this section who is absent from the county on election day because of the active duty or service of the member; or

(iv) A member of the Arkansas National Guard who is on state active duty and absent from the county on election day.

(2)(A) A person who is a resident of a long-term care or residential care facility licensed by the state is not required to present verification of voter registration before voting.

(B) A person not required to present verification of voter registration under subdivision (d)(2)(A) of this section shall provide documentation from the administrator of the facility, attesting that the person is a resident of the facility.

(e)(1) A person registering to vote by mail and who has not previously voted in a federal election in this state shall:

(A) Present to the election official a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter when appearing to vote in person either early or at the polls on election day; or

(B) When voting by mail, submit with the ballot a copy of a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

(2) A person under subdivision (e)(1) of this section shall comply with requirements under this subsection in lieu of complying with subsection (d) of this section.

(3) The provision of subdivision (e)(1) of this section does not include:

(A) Persons whose applications are transmitted by state or federal voter registration agencies;

(B) Persons who are covered by the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20301 et seq.;

(C) Persons covered by the Voting Accessibility for the Elderly and Handicapped Act, 52 U.S.C. § 20101 et seq.;

(D) Persons who are entitled to vote otherwise than in person under any other federal law;

(E) Persons who register to vote by mail and submit as part of the registration any of the identification documents listed in subdivision (e)(1) of this section; or

(F) Persons who register to vote by mail and submit with the registration either a driver's license number or at least the last four (4) digits of the individual's Social Security number and with respect to whom a state or local election official matches the license number or Social Security number with an existing state identification record bearing the same number, name, and date of birth as provided in the registration.

(f) Any person who receives an absentee ballot according to the precinct voter registration list but who elects to vote by early voting or to vote at his or her polling site on election day shall be permitted to cast a provisional ballot.

History. Acts 1969, No. 465, Art. 7, § 7; § 2; 2005, No. 2193, § 1; 2007, No. 560, A.S.A. 1947, § 3-707; Acts 1987, No. 248, § 2; 2013, No. 595, §§ 2, 3; 2017, No. 633, § 7; 1993, No. 716, § 1; 1995, No. 930, § 5; 2019, No. 462, § 6.
 § 2; 1995, No. 941, § 2; 1999, No. 1462, **Amendments.** The 2019 amendment
 § 1; 1999, No. 1471, § 1; 2003, No. 994, added (d)(1)(B)(iv).

CASE NOTES

Judicial Candidate Qualifications.

Circuit court did not clearly err in determining that an appointed district court judge was a qualified elector of a specific district, thereby qualifying her as a candidate for a position on the Court of Appeals; Ark. Const. Amend. 80, § 16(D) simply requires that justices and judges be qualified electors within the geographical area from which they are chosen and

does not contemplate a distinction between “residence” and “domicile”. The appointed judge had established her physical presence in the district by purchasing a home, registering to vote, and assessing personal property there (even though she still owned another home outside the district). *Barrett v. Thurston*, 2020 Ark. 36, 593 S.W.3d 1 (2020).

7-5-202. Public notice of elections.

(a)(1) It shall be the duty of the county board of election commissioners at least eight (8) days before the beginning of early voting for a preferential primary, general primary, general election, general runoff, school, or special election to give public notice in a newspaper of general circulation in the county of:

- (A) The date of the election;
- (B) The hours of voting on election day;
- (C) The places and times for early voting;
- (D) Polling sites for holding the elections in the county;
- (E) The candidates and offices to be elected at that time;
- (F) The time and location of the opening, processing, canvassing, and counting of ballots;

(G) The location where lists of appointed election officials, deputy county clerks, or additional deputies hired to conduct early voting can be found and the dates the lists are available; and

(H) Directions for filing a written objection to the service of an election official, deputy county clerk, or additional deputy.

(2) A person shall not serve as an election official if:

(A) The person is:

(i) Married to or related within the second degree of consanguinity to a candidate running for office in the election;

(ii) The spouse of a member of a county board of election commissioners, except the spouse of a member of a county board of election commissioners may work as a poll worker if no objection is made to his or her service as a poll worker to the county board of election commissioners within seven (7) calendar days after posting the list of officials; or

(iii) A county party chair or his or her spouse, except the county party chair or his or her spouse may work as a poll worker if no objection is made to his or her service to the county board of election

commissioners within seven (7) calendar days after posting the list of officials; and

(B) Another person makes an objection to his or her service to the county board of election commissioners within seven (7) calendar days after posting the list of officials.

(3) [Repealed.]

(b)(1) At least five (5) days before a preferential primary, general primary, general election, general runoff, school election, or special election, a copy of the public notice may be posted at each polling site fixed for holding the election and shall be published in a newspaper of general circulation in the county.

(2)(A) At least eight (8) days before the beginning of early voting, each county board of election commissioners or county clerk shall prepare and post in a public place in the county clerk's office its list of appointed election officials, deputy county clerks, or additional deputies hired to conduct early voting.

(B)(i) At least eight (8) days before election day, each county board of election commissioners shall prepare and post in a public place in the county clerk's office its list of appointed election officials for election day.

(ii) The list may appoint election officials hired for election day in the event of a runoff election.

(iii) All election officials who are qualified to serve on election day are qualified to serve in a corresponding runoff election.

(c)(1) On the day of any election, the following shall be posted at each polling site and remain posted continuously therein until the polls close:

(A) The public notice required in subsection (a) of this section;

(B)(i) At least two (2) sample ballots, marked with the word "SAMPLE", of each ballot style that will be used at the polling site.

(ii) If the polling site has more than fifteen (15) ballot styles and has posted a sample ballot for each ballot style via an internet website before the beginning of early voting, the polling site may provide the following in lieu of the sample ballots under subdivision

(c)(1)(B)(i) of this section:

(a) At least two (2) bound volumes that include each sample ballot, marked with the word "SAMPLE"; or

(b) At least one (1) bound volume that includes each sample ballot, marked with the word "SAMPLE", and at least one (1) electronic device that allows voters to access a sample ballot for each ballot style;

(C) Two (2) copies of the full text of all measures on the ballot;

(D) At least two (2) copies of instructions on how to vote, including how to cast a provisional ballot and instructions for fail-safe voting;

(E) General information on voting rights under applicable federal and state laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated;

(F)(i) General information on federal and state laws regarding prohibitions on acts of fraud and misrepresentation; and

(ii) Information about the availability of the Attorney General's election law violation hotline, including without limitation the hotline telephone number of the Attorney General's election law violation hotline established under § 25-16-717;

(G)(i) Double-sided signs containing the words "VOTE HERE".

(ii) Each sign shall be at least two feet by two feet (2' x 2') in size and shall contain an arrow pointing to the polling site.

(iii) A sign shall be posted near each main driveway entrance to the polling site on each public street bordering the polling site so as to be visible to all traffic approaching the polling site.

(iv) The sign shall be as close as possible to the public street without obstructing traffic; and

(H) One (1) printout from each voting machine, terminal, or ballot tabulator showing that the candidate and question counters register zero (0).

(2) If a county is providing sample ballots for a specified polling site in bound volumes or electronic databases under subdivision (c)(1)(B)(ii) of this section, the county shall ensure the bound volumes or electronic databases are organized so that a voter may easily identify the sample ballot corresponding with his or her precinct-part.

(d) The Secretary of State shall provide to each county board of election commissioners and each county clerk the information to be posted at each polling site according to subdivisions (c)(1)(E) and (F) of this section.

History. Acts 1969, No. 465, Art. 6, §§ 4, 5; A.S.A. 1947, §§ 3-604, 3-605; Acts 1997, No. 451, § 7; 1999, No. 1490, § 3; 2001, No. 474, § 1; 2003, No. 994, § 3; 2005, No. 138, § 1; 2005, No. 1677, § 3; 2007, No. 222, § 4; 2007, No. 556, § 1; 2017, No. 798, § 1; 2019, No. 199, § 1; 2019, No. 258, § 1; 2019, No. 398, § 1; 2019, No. 473, § 3; 2021, No. 448, §§ 3-6; 2021, No. 974, § 5; 2021, No. 1051, § 5.

A.C.R.C. Notes. Pursuant to § 1-2-207(b), amendments made by Acts 448 and 1051 were codified with the exception of Act 1051 language concerning the 10 day limit on making objections to spouses of county party chairs and poll workers working in an election. The 7 day limit from Act 448 was incorporated in place of the repealed 10 day time limit in Act 1051.

Amendments. The 2019 amendment by No. 199 redesignated former (c) as (c)(1); added (c)(1)(B)(ii); added (c)(2); and made stylistic changes.

The 2019 amendment by No. 258 deleted "deputy county clerk, or additional deputy" preceding "if" in the introductory

language of (a)(2); added (a)(2)(A)(ii) and (a)(2)(A)(iii); and redesignated former provisions of (a)(2)(A) as (a)(2)(A)(i).

The 2019 amendment by No. 398 substituted "showing that" for "showing whether" in (c)(8) [now (c)(1)(H)].

The 2019 amendment by No. 473 inserted "school" in the introductory language of (a)(1).

The 2021 amendment by No. 448, in the introductory language of (a)(1), substituted "eight (8) days before the beginning of early voting for a preferential primary, general primary, general election" for "twenty (20) days before each preferential primary and general election and at least ten (10) days before the holding of each general primary"; added (a)(1)(H); substituted "seven (7) calendar days" for "ten (10) calendar days" in (a)(2)(B); repealed (a)(3); inserted "school election" in (b)(1); in (b)(2)(A), substituted "eight (8) days" for "fifteen (15) days" and deleted "and the election day" preceding "each county board"; rewrote (b)(2)(B); and made stylistic changes.

The 2021 amendment by No. 974 redesignated (c)(1)(F) as (c)(1)(F)(i); and added (c)(1)(F)(ii).

The 2021 amendment by No. 1051 added the exception in (a)(2)(A)(ii) and the exception in (a)(2)(A)(iii).

7-5-204. Certification of measures and questions submitted to voters.

CASE NOTES

Mootness.

Amendment to state constitution was presented to the voters, who cast their ballots, the votes had been counted, the amendment was approved, and the deadline for certification of the election had

passed; appellant failed to seek a stay of certification and a judgment would have no practical legal effect, such that the issue was moot. *Kimbrell v. Thurston*, 2020 Ark. 392, 611 S.W.3d 186 (2020).

7-5-205. Write-in candidates' votes — When counted.

No votes for write-in candidates shall be counted or tabulated unless:

(1) The candidate notifies in writing the county board of election commissioners of each county in which the candidate seeks election at least ninety (90) days prior to the election and files the notice with either:

(A) The Secretary of State, if a candidate for the United States Senate, the United States House of Representatives, or any state or district office; or

(B) The county clerk, if a candidate for a county or township office;

(2) The candidate files with the county clerk or the Secretary of State, as required, a political practices pledge and an affidavit of eligibility for the office at the same time the candidate files his or her notice of write-in candidacy;

(3) The notice of write-in candidacy, the political practices pledge, and the affidavit of eligibility are filed during the party filing period; and

(4) The name written on the ballot is the same name listed on the write-in candidate's political practices pledge, except that any abbreviation, misspelling, or other minor variation in the form of the name of the candidate shall be disregarded if the intention of the voter may be ascertained.

History. Acts 1969, No. 465, Art. 6, § 14; 1985, No. 1055, § 1; A.S.A. 1947, § 3-614; Acts 1987, No. 247, § 1; 1987, No. 933, § 1; 1989, No. 912, § 1; 1997, No. 451, § 10; 1999, No. 640, § 1; 2001, No. 955, § 1; 2001, No. 1789, § 4; 2003, No. 542, § 2; 2003, No. 1165, § 4; 2007, No.

222, § 6; 2009, No. 1480, § 18; 2011, No. 1185, § 5; 2015, No. 26, § 1; 2019, No. 597, § 6.

Amendments. The 2019 amendment substituted "filed during the party filing period" for "filed no later than the last day of the party filing period" in (3).

7-5-206. Publication requirements.

(a) The county board of election commissioners shall publish all:

(1) Candidate nominations;

(2) Proposed amendments to the Arkansas Constitution; and
 (3) Other measures and questions required by law to be submitted to the electors at any election.

(b) Publication of the information required in subsection (a) of this section shall be made by:

(1) Posting a list of all nominations, amendments, and other measures and questions to be submitted to electors at the door of the courthouse at least ten (10) days before the day of the election; and

(2)(A) Submitting to the Secretary of State a sample ballot of each ballot style, marked with the word "SAMPLE", that will be used at each polling site.

(B) Each sample ballot shall be submitted at least:

(i) Twenty (20) days before each preferential primary and general election; and

(ii) Ten (10) days before the holding of each general primary, general runoff, school, or special election.

(c) The Secretary of State shall publish all sample ballots on an internet site that is organized so that a voter may easily identify the sample ballot corresponding with his or her precinct-part.

History. Acts 1969, No. 465, Art. 6, § 8; § 7; 2007, No. 1020, § 2; 2009, No. 959, A.S.A. 1947, § 3-608; Acts 1995, No. 497, § 5; 2021, No. 128, § 1.
 § 2; 1995, No. 1085, § 2; 1997, No. 451, **Amendments.** The 2021 amendment
 § 11; 2005, No. 67, § 7; 2007, No. 222, rewrote the section.

7-5-207. Ballots — Names included — Draw for ballot position.

(a)(1) Except as provided in subdivision (a)(2) of this section, all election ballots provided by the county board of election commissioners of any county in this state for any election shall contain in the proper place the name of every candidate whose nomination for any office to be filled at that election has been certified to the county board of election commissioners and shall not contain the name of any candidate or person who has not been certified.

(2)(A) Except as provided in subdivision (a)(2)(B) of this section, unopposed candidates for all offices, including school board positions, shall be declared and certified elected without the necessity of including those names on the general election ballot.

(B)(i) In an election in which one (1) or more candidates are unopposed, the phrase "unopposed candidates" shall appear on the ballot, adjacent to a place in which the voter may cast a vote for all unopposed candidates by placing an appropriate mark.

(ii) Votes received by an unopposed candidate in any election in this state may be counted or tabulated by the election officials for administrative purposes, but shall not be certified unless otherwise provided by law.

(iii) Votes received by an unopposed candidate for the office of Governor, mayor, circuit clerk, or the office of a nonjudicial state elected official shall be counted or tabulated by the election officials and certified according to law.

(iv) The names of all unopposed candidates for the office of Governor, mayor, circuit clerk, and the office of a nonjudicial state elected official shall be separately placed on the general election ballot, and the votes for mayor, Governor, circuit clerk, city clerk, and a nonjudicial state elected official shall be tabulated as in all contested races.

(v) All unopposed candidates, other than for the offices of Governor, mayor, circuit clerk, and the office of a nonjudicial state elected official, shall be declared and certified as elected in the same manner as if the candidate had been voted upon at the election.

(b) No person's name shall be placed upon the ballot as a candidate for any public office in this state at any election unless the person is qualified and eligible at the time of filing, or as otherwise may be provided by law, as a candidate for the office to hold the public office for which he or she is a candidate, except if a person is not qualified to hold the office at the time of filing because of age alone, the name of the person shall be placed on the ballot as a candidate for the office if the person will qualify to hold the office at the time prescribed by law for taking office.

(c)(1) The order in which the names of the candidates shall appear on the ballot shall be determined by lot at a public meeting of the county board of election commissioners not less than seventy-two (72) days before the general election.

(2) Notice of the public meeting shall be given by publication in a newspaper of general circulation in the county at least three (3) days before the drawing.

(3) For runoff elections, the ballot order for eligible candidates shall be the same as for the previous election leading to the runoff.

(d)(1) Adjacent to the name of each candidate in the general election shall be:

(A) His or her party designation; or

(B) The term "INDEPENDENT" if he or she represents no officially recognized party.

(2) Subdivision (d)(1) of this section does not apply to a:

(A) Nonpartisan election; or

(B) Nonpartisan municipal election.

History. Acts 1969, No. 465, Art. 6, § 13; 1971, No. 224, § 1; 1971, No. 261, §§ 20, 22; 1971, No. 355, §§ 1-3; 1971, No. 725, § 1; 1979, No. 389, § 1; A.S.A. 1947, §§ 3-613, 3-615; Acts 1997, No. 451, § 12; 2007, No. 1049, § 15; 2009, No. 959, § 6; 2009, No. 1480, § 19; 2011, No. 1185, § 6; 2013, No. 1110, § 4; 2017, No. 730, § 1; 2019, No. 254, § 1; 2019, No. 597, § 7; 2019, No. 1013, § 1; 2021, No. 448, § 7.

Amendments. The 2019 amendment by No. 254 inserted "city clerk" twice in (a)(2)(B).

The 2019 amendment by No. 597 inserted "including school board positions" in (a)(2)(A).

The 2019 amendment by No. 1013 rewrote (a)(2)(B).

The 2021 amendment deleted "City Clerk" following "Circuit Clerk" in (a)(2)(B)(iii) and (a)(2)(B)(v); deleted "City Clerk" following the first occurrence of "Circuit Clerk" in (a)(2)(B)(iv); and made stylistic changes.

CASE NOTES

ANALYSIS

Jurisdiction.

Preelection Challenge.

Qualification of Candidates.

Jurisdiction.

Circuit court clearly had jurisdiction to hear a candidate's petition where she was challenging the eligibility of a competing Court of Appeals candidate. *Barrett v. Thurston*, 2020 Ark. 36, 593 S.W.3d 1 (2020).

Preelection Challenge.

Candidate's petition was compliant with Arkansas law where she brought a preelection attack on a competing Court of Appeals candidate's eligibility. The verification requirement in § 7-5-801 was inapplicable because that section is a postelec-

tion procedure, while preelection attacks are brought under subsection (b) of this section, which does not have a verification requirement. *Barrett v. Thurston*, 2020 Ark. 36, 593 S.W.3d 1 (2020).

Qualification of Candidates.

Circuit court properly granted a writ of mandamus and declaratory judgment in favor of the Republican Party's nominee for a House district because the Democratic Party's nominee had been convicted of crimes that disqualified him from serving in the Arkansas House of Representatives where the crimes involved "acts of deceit, fraud, or false statement" within the definition of "infamous crime" in Ark. Const., Art. 5, § 9, and his presidential pardon did not restore his eligibility to sit as a representative. *Gray v. Webb*, 2020 Ark. 385, 611 S.W.3d 466 (2020).

SUBCHAPTER 3 — CONDUCT OF ELECTIONS

SECTION.

7-5-301. Acquisition, use, and cost of voting systems.

7-5-305. Requirements.

7-5-308. Provisional ballot procedure.

7-5-309. Voting procedure.

SECTION.

7-5-310. Privacy — Assistance to voters with disabilities.

7-5-315. Counting votes for unopposed and deceased candidates.

7-5-319. Recount.

7-5-301. Acquisition, use, and cost of voting systems.

(a) The casting and counting of votes in all elections shall be by:

(1) Voting machines selected by the Secretary of State;

(2) Electronic vote tabulating devices in combination with voting machines accessible to voters with disabilities to be selected by the Secretary of State; or

(3) Paper ballots counted by hand in combination with voting machines accessible to voters with disabilities selected by the Secretary of State.

(b) All direct recording electronic voting machines shall include a voter-verified paper audit trail.

(c)(1) The quorum court of each county shall choose by resolution a voting system containing voting machines or electronic vote tabulating devices, or both, or voting machines in combination with paper ballots counted by hand for use in all elections in the county.

(2) Any voting machine or electronic vote tabulating devices chosen by the quorum court shall be those selected by the Secretary of State.

(3) Any voting system used in elections for federal office shall comply with the requirements of the federal Help America Vote Act of 2002.

(d)(1) Voting machines and electronic vote tabulating devices shall be purchased pursuant to a competitive bidding process with consideration given to:

(A) Price;

(B) Quality; and

(C) Adaptability to Arkansas ballot requirements.

(2)(A) The Secretary of State shall establish guidelines and procedures for a grant program to distribute funds from the County Voting System Grant Fund, § 19-5-1247.

(B) A grant provided to a county from the County Voting System Grant Fund, § 19-5-1247, shall be paid into the county treasury to the credit of the voting system grant fund.

(C) Moneys deposited into the voting system grant fund shall be appropriated by the quorum court according to the guidelines established by the Secretary of State under subdivision (d)(2)(A) of this section.

(e) The Secretary of State or the county shall not purchase or procure any voting machine or electronic vote tabulating device unless the party selling the machine or device shall:

(1) Guarantee the machines in writing for a period of one (1) year; and

(2) Provide, if deemed necessary by the county, personnel for the supervision and training of county personnel for at least two (2) elections, one (1) primary and one (1) general at no additional cost to the county or the Secretary of State.

(f) Each county shall provide polling places that are adequate for the operation of the voting system, including, but not limited to, access, if necessary, to a sufficient number of electrical outlets and telephone lines.

(g) Each county shall provide or contract for adequate technical support for the installation, set up, and operation of the voting system for each election.

(h) The Secretary of State shall be responsible for the development, implementation, and provision of a continuing program to educate voters and election officials in the proper use of the voting system.

(i) Electronic vote tabulating devices and voting machines, authorized as provided under this subchapter, may be acquired and used in any election upon the adoption of an ordinance by the quorum court of the county.

(j) The costs of using electronic vote tabulating devices and voting machines at all general and special elections, including, but not limited to, costs of supplies, technical assistance, and transportation of the systems to and from the polling places, shall be paid in accordance with § 7-5-104.

(k) The county board of election commissioners shall have complete control and supervision of voting machines and electronic vote tabulating devices at all elections.

(l) The county clerk shall have supervision of voting machines and electronic vote tabulating devices used for early voting in the clerk's designated early voting location.

(m)(1) The county board of election commissioners shall have the care and custody of all voting machines and all electronic vote tabulating devices while not in use.

(2) The county board of election commissioners shall be responsible for the proper preparation, use, maintenance, and care of the voting machines and the electronic vote tabulating devices during the period of time required for that election.

(n) During any time a voter is eligible to cast a ballot, the electronic voting machine or the electronic vote tabulating device shall not:

- (1) Be connected to the internet or an external network;
- (2) Be capable of establishing a wireless connection; or
- (3) Establish a connection to an external network through:
 - (A) A cable;
 - (B) A wireless modem; or
 - (C) Any other mechanism or process.

History. Acts 1969, No. 465, Art. 7, § 2; 1971, No. 261, § 10; A.S.A. 1947, § 3-702; Acts 1995, No. 946, § 4; 1995, No. 963, § 4; 1997, No. 451, § 16; 2005, No. 2233, § 4; 2007, No. 1020, § 5; 2009, No. 959, §§ 8, 9; 2011, No. 1189, § 2; 2013, No. 277, § 1; 2015, No. 1218, § 4; 2019, No. 399, § 1; 2021, No. 468, § 1; 2021, No. 735, § 1.

Amendments. The 2019 amendment deleted "except that those direct recording electronic voting machines in use during

the 2004 general election may include a voter-verified paper audit trail at the discretion of the county board of election commissioners" at the end of (b)(1); and deleted "purchased on or after January 1, 2006" following "voting machines" in (b)(2).

The 2021 amendment by No. 468 deleted former (b)(2) and redesignated (b)(1) as (b).

The 2021 amendment by No. 735 added (n).

7-5-305. Requirements.

(a) Before a person is permitted to vote, the poll worker shall:

(1) Request the voter to identify himself or herself in order to verify the existence of his or her name on the precinct voter registration list;

(2) Request the voter, in the presence of the poll worker, to state his or her address and state his or her date of birth;

(3) Determine that the voter's date of birth and address are the same as those on the precinct voter registration list;

(4) If the date of birth given by the voter is not the same as that on the precinct voter registration list, request the voter to provide identification as the poll worker deems appropriate;

(5)(A) If the voter's address is not the same as that on the precinct voter registration list, verify with the county clerk that the address is within the precinct.

(B) If the address is within the precinct, request the voter to complete a voter registration application form for the purpose of updating county voter registration record files.

(C) If the address is not within the precinct:

- (i) Verify with the county clerk's office the proper precinct; and
- (ii) Instruct the voter to go to the polling site serving that precinct in order for his or her vote to be counted;
- (6) If the voter's name is not the same as that on the precinct voter registration list, request the voter to complete a voter registration application form for purposes of updating county voter registration record files;
- (7) Request the voter, in the presence of the poll worker, to sign his or her name, including the given name, middle name or initial, if any, and last name in the space provided on the precinct voter registration list. If a person is unable to sign his or her signature or make his or her mark or cross, the poll worker shall enter his or her initials and the voter's date of birth in the space for the person's signature on the precinct voter registration list;
- (8)(A) Except as provided in this section, request that the voter present verification of voter registration by providing a document or identification card that meets the requirements of Arkansas Constitution, Amendment 51, § 13, if required by that section.
- (B)(i) If a voter is unable to present verification of voter registration in the form of a document or identification card required by Arkansas Constitution, Amendment 51, § 13, the poll worker shall:
 - (a) Indicate on the precinct voter registration list that the voter did not present verification of voter registration by providing a document or identification card required by Arkansas Constitution, Amendment 51, § 13; and
 - (b) Permit the voter to cast a provisional ballot.
- (ii) When a voter is unable to provide verification of voter registration, the voter and the election official shall follow the procedure under Arkansas Constitution, Amendment 51, § 13.
- (iii) A first-time voter who registers by mail without providing identification when registering and desires to vote in person but who does not meet the identification requirements of § 7-5-201(e) may cast a provisional ballot.
- (iv) Following each election, the county board of election commissioners may review the precinct voter registration lists and may provide the information of the voters not presenting verification of voter registration at the polls to the prosecuting attorney.
- (v) The county board of election commissioners shall refer suspected instances of voter fraud to the prosecuting attorney.
- (vi) The prosecuting attorney may investigate possible voter fraud;
- (9) Record the voter's name or request the voter to print his or her name on the list-of-voters form;
- (10) Follow the procedures under §§ 7-5-310 and 7-5-311 if the person is a voter with a disability and presents himself or herself to vote;
- (11) Verify if a person requested an absentee ballot according to the precinct voter registration list; and

(12) Permit the person to cast a provisional ballot if the person received an absentee ballot according to the precinct voter registration list.

(b) A person not listed on the precinct voter registration list may vote only in accordance with § 7-5-306.

History. Acts 1969, No. 465, Art. 7, § 8; § 8; 2009, No. 959, § 11; 2013, No. 595, A.S.A. 1947, § 3-708; Acts 1993, No. 487, § 4; 2017, No. 633, § 6; 2021, No. 1063, § 2; 1995, No. 946, § 6; 1995, No. 963, § 7.
 § 6; 1997, No. 451, § 18; 1999, No. 1454, § 1; 2001, No. 471, § 1; 2003, No. 994, § 4; 2003, No. 1308, § 4; 2005, No. 238, § 1; 2005, No. 2193, § 2; 2007, No. 1020, § 4; 2009, No. 959, § 11; 2013, No. 595, A.S.A. 1947, § 3-708; Acts 1993, No. 487, § 4; 2017, No. 633, § 6; 2021, No. 1063, § 7.

Amendments. The 2021 amendment added (a)(11)(A) [now (a)(11)], and redesignated former (a)(11) as (a)(11)(B) [now (a)(12)].

7-5-308. Provisional ballot procedure.

(a) Except as provided under subsection (b) of this section, if a voter is required by law to cast a provisional ballot, the provisional ballot shall be cast pursuant to the following procedures:

(1) A poll worker shall notify the voter that the voter may cast a provisional ballot in that election;

(2) The voter shall execute a written eligibility affirmation under penalty of perjury in the presence of the poll worker stating that he or she is a registered voter in the precinct in which he or she desires to vote and is eligible to vote;

(3) Unless a provisional ballot is cast using a ballot marking device, the poll worker shall initial the back of the provisional ballot, remove the provisional ballot stub from the provisional ballot, and place the stub in the stub box provided;

(4) The voter shall mark his or her provisional ballot;

(5) The voter shall place the voted provisional ballot in a provisional ballot secrecy envelope marked "provisional ballot" and seal the envelope;

(6) The voter shall place the sealed provisional ballot envelope containing the voted provisional ballot in a voter envelope, seal the envelope, and give it to the poll worker;

(7) The poll worker shall provide the voter written information instructing him or her on how to determine whether his or her provisional ballot was counted, and if not, the reason the provisional ballot was not counted; and

(8) The poll worker shall make a separate list of the names and addresses of all persons voting a provisional ballot under this subsection, and each person voting a provisional ballot shall sign his or her name to this list.

(b) If a voter is required by law to cast a provisional ballot because the voter is unable to verify his or her registration by providing a document or identification card that meets the requirements of Arkansas Constitution, Amendment 51, § 13, the provisional ballot shall be cast pursuant to the following procedures:

(1) The poll worker shall indicate on the precinct voter registration list that the voter did not present a required document or identification card;

(2) The poll worker shall notify the voter that the voter may cast a provisional ballot in that election;

(3) The voter shall execute a written eligibility affirmation under penalty of perjury in the presence of the poll worker stating that he or she is a registered voter in the precinct in which he or she desires to vote and is eligible to vote;

(4) Unless a provisional ballot is cast using a ballot marking device, the poll worker shall initial the back of the provisional ballot, remove the provisional ballot stub from the provisional ballot, and place the stub in the stub box provided;

(5) The voter shall mark his or her provisional ballot;

(6) The voter shall place the voted provisional ballot in a provisional ballot secrecy envelope marked "provisional ballot" and seal the envelope;

(7) The voter shall place the sealed provisional ballot envelope containing the voted provisional ballot in a voter envelope, seal the envelope, and give it to the poll worker;

(8) The poll worker shall provide the voter written information instructing him or her on how to determine whether his or her provisional ballot was counted, and if not, the reason the ballot was not counted; and

(9) The poll worker shall make a separate list of the names and addresses of all persons voting a provisional ballot under this subsection, and each person voting a provisional ballot shall sign his or her name to this list.

(c) The poll worker shall preserve, secure, and separate all provisional ballots under subsections (a) and (b) of this section from the remaining ballots so that the right of any person to vote may be determined later by the county board of election commissioners or the court in which an election contest may be filed.

(d)(1) Whenever a person casts a provisional ballot under this section, the poll worker shall provide the voter written information that states that the individual who casts a provisional ballot will be able to ascertain whether the provisional vote was counted, and if not, the reason the provisional vote was not counted.

(2) The Secretary of State shall establish a free access system to allow a provisional voter under this section to ascertain whether his or her provisional vote was counted, and if not, the reason his or her provisional vote was not counted.

(3) Access to information about an individual provisional ballot shall be restricted to the voter who cast the provisional ballot.

(e)(1) Before certification of the results of the election, the county board of election commissioners shall determine whether the provisional ballots are valid.

(2) Unless enjoined by a court of competent jurisdiction, a provisional ballot under subsection (a) of this section shall be counted if:

(A) It is cast by a registered voter and is the correct ballot, according to the precinct listed on the voter's eligibility affirmation, for the precinct of the voter's residence; and

(B) The county board of election commissioners does not determine that the provisional ballot is invalid and should not be counted based on other grounds.

(f) Unless enjoined by a court with jurisdiction, a provisional ballot under subsection (b) of this section shall be counted if:

(1) The voter returns to the county board of election commissioners or the county clerk by 12:00 noon on the Monday following the election and presents a document or identification card that complies with the requirements of Arkansas Constitution, Amendment 51, § 13; and

(2) The county board of election commissioners does not determine that the provisional ballot is invalid and should not be counted based on other grounds.

(g) If, upon examination of a provisional ballot under this section, the county board of election commissioners suspects that a violation of the election laws has occurred, the county board of election commissioners may refer the matter to the prosecuting attorney.

History. Acts 1969, No. 465, Art. 7, § 12; A.S.A. 1947, § 3-712; Acts 2007, No. 224, § 4; 2009, No. 1480, § 25; 2017, No. 633, § 7; 2019, No. 109, §§ 1, 2; 2021, No. 249, §§ 3, 4.

Amendments. The 2019 amendment added "Unless a provisional ballot is cast using a ballot marking device" in (a)(3) and (b)(5).

The 2021 amendment deleted (b)(4) and redesignated the remaining subdivisions accordingly; substituted "court with jurisdiction" for "court of competent jurisdiction" in the introductory language of (f); deleted former (f)(1); and redesignated (f)(2)(A) and (B) as (f)(1) and (2).

7-5-309. Voting procedure.

(a) Before giving the voter a preprinted paper ballot, a poll worker shall:

- (1) Initial the back of the ballot;
- (2) Remove the ballot stub; and
- (3) Place the stub into the stub box provided.

(b)(1)(A) Upon receiving his or her ballot, the voter may mark the ballot appropriately at a voting booth, voting machine, or private voting place that allows for the voter to mark the ballot in secrecy so that no one may view how he or she voted.

(B) A voter shall not be allowed more than ten (10) minutes to mark his or her ballot.

(2) The voter or the voter's authorized assistant shall deposit the marked ballot into the ballot box provided.

(c) The voter shall not be required to sign, initial, or in any way identify himself or herself with the ballot, the ballot stub, or the list of voters other than in the manner provided in this section.

(d) [Repealed.]

(e) After having voted or having declined to vote, the voter shall immediately depart from the polling site.

(f) A person shall not carry a ballot outside of the polling place.

(g)(1) If a paper ballot is left in the polling site outside of the ballot box after the voter has departed, a poll worker shall:

(A) Write "Abandoned" on the face of the paper ballot;

(B) Place the paper ballot into an envelope marked "Abandoned Ballot";

(C) Note in writing on the outside of the envelope the circumstances surrounding the abandoned ballot; and

(D) Preserve the abandoned ballot separately.

(2) The county board of election commissioners shall not count the ballot.

(h)(1) If an electronic vote tabulating device at the polling site has rejected a ballot that remains in the receiving part of the device, two (2) poll workers shall override warnings on the device and complete the process of casting the ballot only if:

(A) The voter has departed the polling site; and

(B) The voter did not indicate that he or she chose to cancel or replace the ballot.

(2) The poll workers shall document:

(A) The time;

(B) The name of the voter;

(C) The names of the poll workers completing the process of casting the ballot; and

(D) All other circumstances surrounding the abandoned ballot.

History. Acts 1969, No. 465, Art. 7, § 11; A.S.A. 1947, § 3-711; Acts 1997, No. 451, § 21; 2005, No. 880, § 2; 2007, No. 224, § 5; 2007, No. 834, § 1; 2009, No. 959, § 13; 2011, No. 1033, § 1; 2013, No. 1424, § 1; 2013, No. 1461, § 1; 2017, No. 908, § 1; 2019, No. 109, § 3; 2019, No. 534, § 1; 2019, No. 664, § 1.

Amendments. The 2019 amendment by No. 109 inserted "preprinted paper" in the introductory language of (a).

The 2019 amendment by No. 534 repealed (d).

The 2019 amendment by No. 664 substituted "ten (10) minutes" for "five (5) minutes" in (b)(1)(B).

7-5-310. Privacy — Assistance to voters with disabilities.

(a)(1) Each voter shall be provided the privacy to mark his or her ballot. Privacy shall be provided by the poll workers at each polling site or by the county clerk, if the county clerk conducts early voting, to ensure that a voter desiring privacy is not singled out.

(2)(A) In a county that uses paper ballots, the county board of election commissioners shall determine and provide the appropriate number of voting booths for each polling site.

(B) A voting booth shall be:

(i) Constructed to permit the voter to prepare his or her ballot while screened from observation;

(ii) Furnished with supplies and conveniences that will enable the voter to prepare his or her ballot; and

(iii) Situated in the plain view of a poll worker.

(C) If a person is not a poll worker and is not casting a ballot, he or she shall not be within six feet (6') of the voting booths, unless:

(i) The person is authorized by an election judge; and

(ii) The person's presence is necessary to keep order or enforce the law.

(3) A person may not enter a polling site on election day during voting hours unless the person is:

(A) An election official;

(B) An authorized poll watcher;

(C) A voter present to cast his or her ballot;

(D) A person in the care of a voter if the person:

(i) Does not disrupt or interfere with the normal voting procedures; and

(ii) Is not eligible to vote in that election;

(E) A person lawfully assisting the voter;

(F) A law enforcement officer or emergency service personnel who are acting in the line of duty;

(G) A monitor authorized by the State Board of Election Commissioners or observer authorized by a federal agency with the authority to place the observer at the polling site;

(H)(i) A person with business in the polling site that is not connected to the election.

(ii) A person with business in the polling site that is not connected to the election shall remain outside of the voter processing area or voting room except to pass through or by the voter processing area or voting room without speaking to a voter or an election official and with the purpose to conduct his or her business;

(I) A person whom the county clerk or the county board of election commissioners has authorized to assist in conducting the election;

(J) A person authorized by the State Board of Election Commissioners or the county board of election commissioners; or

(K) The county clerk.

(b)(1) A voter shall inform the poll workers at the time that the voter presents himself or herself to vote that he or she is unable to mark or cast the ballot without help and needs assistance in casting or marking his or her ballot.

(2) The voter shall be directed to a voting machine equipped for use by persons with disabilities by which he or she may elect to cast his or her ballot without assistance, or the voter may request assistance with either the paper ballot or the voting machine, depending on the voting system in use for the election, by:

(A) Two (2) poll workers; or

(B) A person named by the voter.

(3) If the voter is assisted by two (2) poll workers, one (1) of the poll workers shall observe the voting process and one (1) may assist the voter in marking and casting the ballot according to the wishes of the voter without comment or interpretation.

(4)(A)(i) If the voter is assisted by one (1) person named by the voter, he or she may assist the voter in marking and casting the ballot according to the wishes of the voter without any comment or interpretation.

(ii) If an election official witnesses the person assisting the voter commenting or interpreting in violation of subdivision (b)(4)(A)(i) of this section:

(a) The election official may cause the person assisting the voter to be removed from the polling site; and

(b) If the voter requests additional assistance in marking and casting his or her ballot, it may be provided by two (2) election officials trained to do so.

(B) No person other than the following shall assist more than six (6) voters in marking and casting a ballot at an election:

(i) A poll worker;

(ii) The county clerk during early voting; or

(iii) A deputy county clerk during early voting.

(C) If the person whose assistance has been requested by the voter is a candidate on the ballot:

(i) The candidate shall not assist more than six (6) voters in the election; and

(ii) The candidate may only assist a voter who is related to the candidate within the second degree of consanguinity.

(5) It shall be the duty of the poll workers at the polling site to make and maintain a list of the names and addresses of all persons assisting voters.

(c) Any voter who, because of physical, sensory, or other disability, presents himself or herself for voting and then informs a poll worker at the polling site that he or she is unable to stand in line for extended periods of time shall be entitled to and assisted by a poll worker to advance to the head of any line of voters then waiting in line to vote at the polling site.

History. Acts 1995, No. 908, § 1; 1995, No. 1296, § 39; 1997, No. 451, § 22; 2003, No. 1308, § 1; 2005, No. 2233, § 6; 2007, No. 1020, § 7; 2009, No. 658, § 3; 2009, No. 959, § 14; 2013, No. 1461, § 2; 2019, No. 965, § 1.

Amendments. The 2019 amendment rewrote (a)(2)(A); inserted “while” in (a)(2)(B)(i); substituted “polling site” for

“polling place” throughout (a)(3); in (a)(3)(H)(ii), inserted “voter processing area or” twice and inserted “without speaking to a voter or an election official and”; inserted “county clerk or the” in (a)(3)(I); added (a)(3)(K); inserted “or marking” in (b)(1); added the (b)(4)(A)(i) designation; added (b)(4)(A)(ii); added (b)(4)(C); and made stylistic changes.

CASE NOTES

Preemption.

It is likely that subdivisions (b)(4)(B) and (b)(5) of this section, and § 7-1-103(a)(19) and (b)(1) impermissibly narrow 52 U.S.C. § 10508's dictate that a voter may be assisted by a person of the

voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union. The timing of this motion prevented the court from granting plaintiffs the relief they sought (a temporary restraining order and/or pre-

liminary injunction), as they had not offered any explanation why they waited until the night before the election to bring this suit. Ark. United v. Thurston, No. 5:20-CV-5193, 2020 U.S. Dist. LEXIS 207145 (W.D. Ark. Nov. 3, 2020).

7-5-315. Counting votes for unopposed and deceased candidates.

(a)(1) The votes received by an unopposed candidate in any election held in this state may be counted or tabulated for administrative purposes but shall not be certified, unless otherwise provided by law, by the election officials. The word “UNOPPOSED” shall be inserted on the tally sheet to indicate that the candidate has received a majority of the votes cast in the election. However, the votes received by an unopposed candidate for the office of Mayor, Governor, and Circuit Clerk shall be counted and tabulated by the election officials.

(2) All other unopposed candidates shall be declared and certified as elected in the same manner as if the candidate had been voted upon at the election.

(b)(1) The votes received by any person whose name appeared on the ballot and who withdrew or died after the certification of the ballot shall be counted.

(2)(A) If the person received enough votes to win the election, a vacancy in election shall be declared.

(B)(i) If the person received enough votes to qualify for a runoff, the person’s name shall appear on the runoff ballot.

(ii) If enough votes are cast for the person to win the runoff, then a vacancy in election shall exist.

History. Acts 1969, No. 465, Art. 7, § 17; A.S.A. 1947, § 3-717; Acts 1987, No. 248, § 8; 1991, No. 530, § 1; 1997, No. 451, § 26; 2003, No. 994, § 7; 2007, No. 1020, § 11; 2009, No. 1480, § 28; 2017, No. 730, § 2; 2019, No. 1013, § 2.

Amendments. The 2019 amendment, in (a)(1), inserted “in any election held in this state may be counted or tabulated for

administrative purposes, but shall not be certified, unless otherwise provided by law, by the election officials. The word ‘UNOPPOSED’ shall be inserted on the tally sheet to indicate that the candidate has received a majority of the votes cast in the election. However, the votes received by an unopposed candidate”; and made stylistic changes.

7-5-319. Recount.

(a)(1) Any candidate voted for who may be dissatisfied with the returns from any precinct shall have a recount of the votes cast therein upon the candidate’s presenting the county board of election commissioners with a petition requesting the recount.

(2) When the number of outstanding absentee ballots of overseas voters is not sufficient to change the results of the election, the candidate must present the petition no later than two (2) days after the county board of election commissioners declares preliminary and unofficial results of the election, including a statement of the number of outstanding absentee ballots of overseas voters.

(3) When the number of outstanding absentee ballots of overseas voters is sufficient to potentially change the results of the election, the candidate must present the petition at any time before the county board of election commissioners finally completes the canvass of the returns of the election and certifies the result.

(b) At the time that the petition requesting the recount is presented, the county board of election commissioners shall provide to the candidate requesting the recount a copy of the test results on the voting machines and the electronic vote tabulating devices. Only one (1) recount per candidate per election shall be permitted. The county board of election commissioners shall certify the results of the last recount. The county board of election commissioners may upon its own motion conduct a recount of the returns from any or all precincts.

(c)(1) For any recount of an election in which ballots are cast using a direct recording electronic voting machine with a voter-verified paper audit trail, the voter-verified paper audit trail shall serve as the official ballot to be recounted.

(2) The county board of election commissioners either may:

(A) Manually sum the total votes for each candidate involved in the recount that is printed on the voter-verified paper audit trail; or

(B) Count by hand the votes for each candidate involved in the recount as shown on the voter-verified paper audit trail.

(3) If the voter-verified paper audit trail is damaged or for some other reason is incapable of being used for a recount, the paper record produced by the machine for manual audit shall be the official ballot to be recounted.

(4) If the voting machine is exempt from the requirement to have a voter-verified paper audit trail and does not have one, the paper record produced by the machine for manual audit shall be the official ballot to be recounted.

(5) If the county board of election commissioners counts by hand the votes for each candidate involved in the recount, the county board of election commissioners may check the back of the ballot to see if the ballot has been initialed by an election official.

(d) For the recount of an election in which paper ballots are used, the county board of election commissioners shall open the package containing the ballots and recount the ballots in the manner prescribed by law for the count to be made by the election officials in the first instance, or if there is a determination by the county board of election commissioners that the voting machine or electronic vote tabulating device may be malfunctioning, it may recount the ballots by any manner prescribed by law.

(e) The result as found upon the recount, if it differs from that certified by the election officials, shall be included in the canvass as the vote for the particular precinct for which the recount was ordered and made.

(f) After the recount is completed, the ballots shall again be sealed and kept as provided by law.

(g)(1) The costs for any recount must be borne by the candidate petitioning for it, and payment of the costs must be made to the county board of election commissioners prior to the recount in an amount determined by the county board of election commissioners.

(2) In the event that the outcome of the election is altered by recount, the costs of the recount shall be refunded to the candidate who petitioned for the recount.

(h) The costs of any recount shall be based on the actual costs incurred to conduct the recount, but in no instance shall the amount charged to conduct a recount exceed the rate of twenty-five cents (25¢) per vote cast in the precincts where the recount is requested or a total of two thousand five hundred dollars (\$2,500) for the entire county, whichever is less.

(i) Within forty-eight (48) hours after a petition for recount is filed, the county board of election commissioners shall notify all candidates whose election could be affected by the outcome of the recount.

History. Acts 1969, No. 465, Art. 5, § 8; § 7; 2009, No. 1480, § 31; 2019, No. 534, A.S.A. 1947, § 3-508; Acts 1993, No. 430, § 2.
 § 1; 1997, No. 451, § 30; 1999, No. 1023, § 1; 2001, No. 1475, § 4; 2003, No. 1038, § 1; 2003, No. 1165, § 5; 2005, No. 2233, § 1.

Amendments. The 2019 amendment added (c)(5).

SUBCHAPTER 4 — ABSENTEE VOTING

SECTION.

7-5-403. Designated bearers, authorized agents, and administrators.

7-5-404. Applications for ballots — Definition.

7-5-406. Members of uniformed services and other citizens residing outside the United States.

SECTION.

7-5-409. Materials furnished to qualified voters.

7-5-411. Methods of voting absentee.

7-5-412. Marking and return of absentee ballots — Delivery of mailed absentee ballots.

7-5-416. Counting of absentee ballots.

7-5-418. Early voting.

7-5-403. Designated bearers, authorized agents, and administrators.

(a)(1) A designated bearer may obtain absentee ballots for no more than two (2) voters per election.

(2)(A) A designated bearer shall not have more than two (2) absentee ballots in his or her possession at any time.

(B) If the county clerk knows or reasonably suspects that a designated bearer has more than two (2) absentee ballots in his or her possession, the county clerk shall notify the prosecuting attorney.

(3)(A) A designated bearer receiving an absentee ballot from the county clerk for a voter shall obtain the absentee ballot directly from the county clerk and deliver the absentee ballot directly to the voter.

(B) A designated bearer receiving an absentee ballot from a voter shall obtain the absentee ballot directly from the voter and deliver the absentee ballot directly to the county clerk.

(4)(A) A designated bearer may deliver to the county clerk the absentee ballots for not more than two (2) voters.

(B) The designated bearer shall be named on the voter statement accompanying the absentee ballot.

(5) In order to obtain an absentee ballot from the county clerk:

(A) The designated bearer shall show a form of current photographic identification to the county clerk;

(B) The county clerk shall print the designated bearer's name and address beside the voter's name on a register;

(C) The designated bearer shall sign the register under oath indicating receipt of the voter's absentee ballot; and

(D) The county clerk shall indicate beside the designated bearer's name on the register that he or she obtained an absentee ballot for a voter.

(6) When a designated bearer delivers an absentee ballot to the county clerk:

(A) The designated bearer shall present current and valid photographic identification to the county clerk;

(B) The county clerk shall print the designated bearer's name and address beside the voter's name on a register;

(C) The designated bearer shall sign the register under oath indicating delivery of the voter's absentee ballot;

(D) The county clerk shall not accept an absentee ballot from a designated bearer who does not sign the register under oath; and

(E) The county clerk shall write or stamp the word "BEARER" and write the designated bearer's name and address on the voter's absentee ballot return envelope.

(7) When providing an absentee ballot to a designated bearer or receiving an absentee ballot from a designated bearer, the county clerk shall provide to the designated bearer a written notice informing the designated bearer that:

(A) A designated bearer may obtain ballots for no more than two (2) voters per election;

(B) A designated bearer shall at no time have more than two (2) ballots in his or her possession;

(C) A designated bearer shall not deliver ballots to the county clerk for more than two (2) voters per election; and

(D) Possession of an absentee ballot with the intent to defraud a voter or an election official is a felony under § 7-1-104.

(8) The county clerk shall post a notice of the rules concerning designated bearers and authorized agents in each county clerk's office where absentee ballots are distributed or returned.

(b)(1) An authorized agent may deliver applications for absentee ballots to the county clerk and obtain absentee ballots from the county clerk for not more than two (2) voters per election who cannot cast a ballot at the appropriate polling place on election day because the voter is a patient in a hospital or long-term care or residential care facility licensed by the state.

(2) At no time shall an authorized agent have more than two (2) absentee ballots in his or her possession.

(3)(A) An authorized agent receiving an absentee ballot from the county clerk for a voter shall deliver the absentee ballot directly to the voter.

(B) An authorized agent receiving an absentee ballot from a voter shall deliver the absentee ballot directly to the county clerk.

(4)(A) In order for an authorized agent to obtain a ballot from the county clerk, the authorized agent shall submit to the county clerk an affidavit from the administrative head of a hospital or long-term care or residential care facility licensed by the state that the applicant is a patient of the hospital or long-term care or residential care facility licensed by the state and is thereby unable to vote on the election day at his or her regular polling site.

(B) A copy of the affidavit shall be retained by the county clerk as an attachment to the application for an absentee ballot.

(5) In order to obtain an absentee ballot from the county clerk, the:

(A) Authorized agent shall present current photographic identification to the clerk;

(B) Clerk shall print the authorized agent's name and address beside the voter's name on a register; and

(C) Authorized agent shall sign the register under oath indicating receipt of the voter's ballot.

(6) When an authorized agent delivers an absentee ballot to the county clerk, the:

(A) Authorized agent shall show some form of current photographic identification to the clerk;

(B) Clerk shall print the authorized agent's name and address beside the voter's name on a register;

(C) Authorized agent shall sign the register under oath indicating delivery of the voter's ballot; and

(D) The county clerk shall not accept an absentee ballot from an authorized agent who does not sign the register under oath.

(7) The county clerk shall write or stamp the words "AUTHORIZED AGENT" and the agent's name and address on the voter's absentee ballot return envelope.

(8) The county clerk shall post a notice of the rules concerning designated bearers and authorized agents in each county clerk's office where absentee ballots are distributed or returned.

(c)(1) The county clerk shall keep a register of designated bearers and authorized agents.

(2) The designated bearer and authorized agent register shall contain the following oath on each page: "I ACKNOWLEDGE THAT ARKANSAS LAW PROHIBITS DESIGNATED BEARERS AND AUTHORIZED AGENTS FROM RECEIVING OR RETURNING MORE THAN TWO (2) ABSENTEE BALLOTS PER ELECTION. I HAVE COMPLIED WITH THE ARKANSAS LAW. I UNDERSTAND THAT IF I PROVIDE FALSE INFORMATION ON THIS FORM, I MAY BE

GUILTY OF PERJURY AND SUBJECT TO A FINE OF UP TO TEN THOUSAND DOLLARS (\$10,000) OR IMPRISONMENT FOR UP TO TEN (10) YEARS, OR BOTH, UNDER FEDERAL AND STATE LAWS."

(d)(1)(A) An administrator may deliver to the county clerk an application for an absentee ballot for any voter who is a patient of a long-term care or residential care facility licensed by the state and who authorizes the administrator to obtain an absentee ballot on his or her behalf.

(B) The absentee ballot application shall identify the administrator by name as the administrator of the facility where the voter resides.

(2) Upon presentation of photographic identification to the county clerk, an administrator may receive absentee ballots for as many qualified residents of the facility as:

(A) Apply for absentee ballots; and

(B) Identify the administrator in the voter's absentee ballot application.

(3)(A) An administrator may deliver the absentee ballot to the county clerk for any voter who names the administrator on his or her application and voter statement.

(B) Absentee ballots may be delivered to the county clerk in person by the administrator or by mail.

(4) Before obtaining an absentee ballot, an administrator shall submit to the county clerk an affidavit, signed and dated by the administrator, stating:

(A) That he or she is the administrative head of a long-term care or residential care facility licensed by the state;

(B) The name and address of the facility;

(C) That he or she has been authorized by the voters who reside in his or her facility to obtain from the county clerk and return to the county clerk absentee ballots on their behalf;

(D) That each of the voters for whom the administrator seeks to obtain an absentee ballot has named the administrator on his or her application; and

(E) That the administrator understands that Arkansas law requires that the administrator assist the voter by marking or casting a ballot on behalf of the voter without any comment or interpretation.

(5) The county clerk shall attach a copy of the administrator's affidavit to each application for an absentee ballot delivered by the administrator to the county clerk.

(6) When the ballots are returned by the administrator in person or by mail, the county clerk shall write or stamp the word "ADMINISTRATOR" and write the administrator's name on the voter's absentee ballot return envelope.

(e) Any person who knowingly makes a false statement on an affidavit required by this section shall be guilty of perjury and subject to a fine of up to ten thousand dollars (\$10,000) or imprisonment of up to ten (10) years.

History. Acts 2007, No. 543, § 2; 2009, No. 250, §§ 15-17; 2009, No. 959, §§ 16, 22; 2011, No. 1043, § 1; 2013, No. 1424, § 2; 2019, No. 965, § 2.

Amendments. The 2019 amendment added (d)(4)(E).

7-5-404. Applications for ballots — Definition.

(a)(1)(A) Applications for absentee ballots must be signed by the applicant and verified by the county clerk by checking the voter's name, address, date of birth, and signature from the voter registration application unless the application is sent by electronic means.

(B) If the application is sent by electronic means, the application must bear a verifiable facsimile of the applicant's signature.

(2)(A) If the signatures on the absentee ballot application and the voter registration application record are not similar, the county clerk shall not provide an absentee ballot to the voter.

(B) If the absentee ballot request is rejected under subdivision (a)(2)(A) of this section, the county clerk shall:

- (i) Provide notice promptly to the voter of the rejection;
- (ii) Allow the voter to resubmit the request; and
- (iii) Electronically record the rejection in the permanent system maintained by the county clerk.

(C) The notice to the voter under subdivision (a)(2)(B) of this section shall be made by:

- (i) The most efficient means available, including without limitation by telephone or email; and
- (ii) Written notice sent by first-class mail to the address where the voter is registered to vote.

(3) Delivery of the request for an absentee ballot to the county clerk may be made in one (1) of the following ways, and in no other manner:

(A) For applications submitted using the form prescribed in § 7-5-405:

(i) In person at the office of the county clerk of the county of residence of the voter no later than the time the county clerk's office regularly closes on the Friday before election day;

(ii) Applications by mail must be received in the office of the county clerk of the county of residence of the voter not later than seven (7) days before the election for which the application was made;

(iii) A designated bearer may deliver the completed application to the office of the county clerk of the county of residence of the applicant not later than the time the county clerk's office regularly closes on the Friday before election day;

(iv) A person declared as the authorized agent of the applicant may deliver the application to the office of the county clerk of the county of residence of the applicant not later than 1:30 p.m. on the day of the election;

(v) An administrator may deliver the application in person at the office of the county clerk of the county of residence of the voter no later than the time the county clerk's office regularly closes on the Friday before election day; or

(vi)(a) Delivery by electronic means to the county clerk's office of the county of residence of the voter not later than seven (7) days before the election for which the application was made.

(b) The completed application sent by electronic means will be accepted only upon verification of the facsimile signature of the applicant by the county clerk.

(c) Once verified as a reasonable likeness of the voter's signature, the signature appearing on a copy of an application sent by electronic means shall be presumed to be authentic until proven otherwise; or

(B) If the applicant does not use the form prescribed in § 7-5-405, he or she may make an application for an absentee ballot as follows:

(i) A letter or postcard must be received in the office of the county clerk not later than seven (7) days before the date of the election. The letter or postcard shall contain information sufficient for the county board of election commissioners and the county clerk to accept the letter or postcard in lieu of the application form; or

(ii) An applicant may transmit a written request for an absentee ballot by electronic means that shall contain the voter's signature and other information sufficient for acceptance in lieu of the application form.

(b)(1) Any person eligible to vote by absentee ballot may request the county clerk to mail to an address within the continental United States an application for an absentee ballot.

(2)(A) For those persons voting by absentee ballot who reside outside the county in which they are registered to vote, the application shall remain in effect for one (1) year unless revoked by the voter, and the county clerk shall thereafter automatically mail no later than twenty-five (25) days before each election an absentee ballot for each election.

(B)(i) For those persons voting by absentee ballot who reside within the county in which they are registered to vote, the application shall be valid for only one (1) election cycle.

(ii) The election cycle shall include any one (1) election and the corresponding runoff election.

(C)(i) For a voter residing in a long-term care or residential care facility licensed by the state the application shall remain in effect for one (1) calendar year unless withdrawn by the voter.

(ii) The county clerk automatically shall mail no later than twenty-five (25) days before each election an absentee ballot for each election unless, before mailing, the administrator of the facility has presented an absentee ballot request from the voter authorizing the administrator to receive the absentee ballot on behalf of the voter for that election.

(D)(i) For a voter with a disability as defined in § 7-5-311, the application shall remain in effect for one (1) calendar year unless withdrawn by the voter.

(ii) The county clerk automatically shall mail no later than twenty-five (25) days before each election an absentee ballot for each election.

(c) The following may request an absentee ballot for one (1) or more elections, up to and including the next regularly scheduled general election for federal office, including without limitation any runoff elections that may occur as a result of the outcome of the general elections, by submitting one (1) application during that period of time in the manner provided under subsection (a) of this section:

(1) A citizen of the United States temporarily residing outside the territorial limits of the United States;

(2) A member of the uniformed services of the United States while in active duty or service, including his or her spouse or dependent, who by reason of active duty or service of the member is absent from the place of residence where the member, spouse, or dependent is otherwise qualified to vote;

(3) A member of the United States Merchant Marine while in active duty or service, including his or her spouse or dependent, who by reason of the active duty or service of the member is absent from the place of residence where the member, spouse, or dependent is otherwise qualified to vote; and

(4) A member of the Arkansas National Guard while in state active duty or service, including his or her spouse or dependent, who by reason of state active duty or service of the member is absent from the place of residence where the member, spouse, or dependent is otherwise qualified to vote.

(d) As used in this section, “electronic means” means a scanned image sent by:

- (1) Electronic mail; or
- (2) Facsimile machine.

History. Acts 1969, No. 465, Art. 9, § 4; 1981, No. 685, § 1; 1983, No. 430, § 1; 1985, No. 1019, § 1; A.S.A. 1947, § 3-904; Acts 1987, No. 248, § 9; 1987, No. 843, § 1; 1991, No. 863, § 1; 1993, No. 303, § 1; 1993, No. 1201, § 1; 1995, No. 686, § 3; 1995, No. 948, § 3; 1997, No. 1092, § 1; 1999, No. 1111, § 1; 1999, No. 1538, §§ 2, 3; 2003, No. 994, § 8; 2005, No. 67, § 11; 2007, No. 543, § 1; 2007, No. 556, § 3; 2009, No. 250, § 4; 2009, No. 959, § 16; 2011, No. 1188, § 1; 2013, No. 1424, § 3; 2019, No. 462, § 7; 2021, No. 736, §§ 2, 3; 2021, No. 973, § 1.

Amendments. The 2019 amendment added (c)(4).

The 2021 amendment by No. 736 substituted “voter registration application” for “registration records” in (a)(1)(A); and inserted “application” following “registration” in (a)(2)(A).

The 2021 amendment by No. 973 substituted “Friday before election day” for “day before election day” in (a)(3)(A)(i) and (a)(3)(A)(v); and substituted “Friday before election day” for “day before the day of the election” in (a)(3)(A)(iii).

7-5-406. Members of uniformed services and other citizens residing outside the United States.

(a) Any qualified elector of this state in any of the following categories who is absent from the place of his or her voting residence may make a request for an absentee ballot by submission of a federal postal card application as provided for in the Uniformed and Overseas Citizens Absentee Voting Act and may vote without prior registration

by regular absentee ballot or by Federal Write-in Absentee Ballot in any election held in his or her election precinct if he or she is otherwise eligible to vote in that election:

(1) Members of the uniformed services of the United States while in active duty or service, and their spouses and dependents who, by reason of the active duty or service of the member, are absent from the place of residence where the spouses or dependents are otherwise qualified to vote;

(2) Members of the United States Merchant Marine while in active duty or service and their spouses and dependents who, by reason of the active duty or service of the member, are absent from the place of residence where the spouses or dependents are otherwise qualified to vote;

(3) Citizens of the United States residing or temporarily outside the territorial limits of the United States and the District of Columbia; and

(4) Members of the Arkansas National Guard while in state active duty or service, and their spouses and dependents who, by reason of the state active duty or service of the member, are absent from the place of residence where the spouses or dependents are otherwise qualified to vote.

(b)(1) The ballot or ballots shall be transmitted according to state laws or rules and federal laws, rules, and regulations.

(2) The Secretary of State shall establish and transmit to each county clerk and each county board of election commissioners procedures in accordance with state and federal law that:

(A) Allow absent uniformed services voters and absent overseas voters to request, either by mail or electronically, voter registration applications and absentee ballot applications for all elections in the state;

(B) Allow county clerks to send by mail or electronically, in accordance with the preferred method of transmission designated by the absent uniformed services voter or absent overseas voter, voter registration applications and absentee ballot applications;

(C) Allow the absent uniformed services voter or absent overseas voter to designate whether the voter prefers that the voter registration application or absentee ballot application be transmitted by mail or electronically;

(D) Allow the transmission by mail and, to the extent funding is available, electronically of blank absentee ballots to absent uniformed services voters and absent overseas voters for all elections in the state in a manner that expedites the transmission of absentee ballots;

(E) Allow county clerks and county boards of election commissioners to accept and process marked absentee ballots of absent uniformed services voters and absent overseas voters;

(F) Ensure, to the extent practicable, the protection of the security and integrity of the voter registration and absentee ballot request process and the privacy of the identity and other personal data of an

absent uniformed services voter or absent overseas voter who requests or is sent a voter registration application, absentee ballot application, or absentee ballot throughout the process of making a request or being sent an application or ballot; and

(G) Establish, to the extent funding is available, a free access system by which an absent uniformed services voter or absent overseas voter may determine whether the absentee ballot of the absent uniformed services voter or absent overseas voter has been received by the appropriate election official.

(3) The Secretary of State shall:

(A) Provide each county clerk and each county board of election commissioners with written copies of the procedures under subdivision (b)(2) of this section by February 1 of each even-numbered year; and

(B) Promptly notify each county clerk and each county board of election commissioners of changes in relevant laws, rules, federal regulations, or procedures.

(4) Notwithstanding any other provisions in this title, if selected by any grantor, this state or any county in this state may participate in a Federal Voting Assistance Program project which allows members of the uniformed services and voters overseas to register to vote and to vote in elections electronically, according to state laws and rules, and federal laws, rules, and regulations, if funds are available.

(c)(1)(A) Except as provided in subdivision (c)(1)(B) of this section, for the qualified electors in the categories named in subsection (a) of this section who are temporarily outside the territorial limits of the United States, the county board of election commissioners shall prepare a special absentee ballot for each preferential primary and general election to be sent to the voter in addition to the regular absentee ballot.

(B) The county board of election commissioners shall not prepare a special absentee ballot for a nonpartisan judicial election.

(2)(A) The special absentee ballot shall contain a list of all offices contested by three (3) or more candidates and the candidates qualifying for the election in each office.

(B) The special absentee ballot shall permit the elector to vote in the general primary election or in a general runoff election by indicating his or her order of preference for each candidate for each office.

(C)(i) To indicate his or her order of preference for each candidate for each office, the voter shall put the number one (1) next to the name of the candidate who is the voter's first choice, the number two (2) for the voter's second choice, and so forth, so that, in consecutive numerical order, a number indicating the voter's preference is written by the voter next to the candidate's name on the ballot.

(ii) However, the voter shall not be required to indicate his or her preference for more than one (1) candidate on the ballot if he or she chooses.

(3) The special absentee ballot shall be marked as a “special runoff ballot”.

(4) Instructions shall be sent with the special absentee ballot to the voter explaining the special runoff voting process.

History. Acts 1969, No. 465, Art. 9, §§ 5, 7, 8; 1971, No. 184, § 2; 1971, No. 261, §§ 25, 26; 1977, No. 739, § 1; 1983, No. 430, §§ 2, 4; 1985, No. 1019, § 2; A.S.A. 1947, §§ 3-905, 3-907, 3-908; Acts 1997, No. 1092, § 3; 2001, No. 1180, § 1; 2003, No. 107, § 1; 2003, No. 749, § 1; 2003, No. 994, § 9; 2005, No. 751, § 1; 2007, No. 233, § 1; 2007, No. 261, § 1; 2007, No. 556, §§ 5, 6; 2009, No. 250, §§ 7, 8; 2009, No. 659, § 6; 2009, No. 703, § 1; 2011, No. 1188, § 3; 2019, No. 315, §§ 417-419; 2019, No. 462, § 8.

Amendments. The 2019 amendment by No. 315 inserted “laws or rules” in (b)(1); inserted “federal” in (b)(3)(B); and inserted “laws and rules” following “state” in (b)(4).

The 2019 amendment by No. 462 added (a)(4).

7-5-409. Materials furnished to qualified voters.

(a)(1)(A) The county clerk shall satisfy himself or herself that the applicant for an absentee ballot is a qualified registered elector in the ward, precinct, or township in which he or she claims to be a resident or that the applicant does not require prior registration under § 7-5-406.

(B) The county clerk shall verify that the application has been properly signed by the applicant and, if necessary, the designated bearer, administrator, or authorized agent. If the application is not properly signed, the application shall be rejected by the county clerk.

(C) The county clerk shall notify the applicant of the reason for the rejection.

(2) If the county clerk is unable to contact the applicant to cure the deficiency, the county clerk shall forward the application with the reason for the rejection to the county board of election commissioners. The county board of election commissioners shall determine whether the applicant is a qualified elector.

(b) If the applicant is registered or is otherwise eligible to vote absentee, the county clerk, prior to mailing or delivering the ballot, shall detach the ballot stub and deposit the ballot stub into a sealed box designated as “Absentee Stub Box” and deliver to the applicant or to the applicant’s designated bearer, authorized agent, or administrator for delivery to the applicant the following materials:

(1) An official absentee ballot for each election named in the application;

(2) Instructions for voting and returning the official absentee ballot to the county clerk;

(3) An official absentee ballot secrecy envelope on which there shall be written or printed the words “Ballot Only”;

(4)(A)(i) A uniform voter statement created and approved by the State Board of Election Commissioners.

(ii) The voter statement shall include the following heading in bold capitalized letters: **“THIS VOTER STATEMENT SHALL BE COMPLETED AND RETURNED IN THE MAILING ENVE-**

LOPE OR THE ABSENTEE BALLOT WILL NOT BE COUNTED."

(iii) The voter statement shall include the following statement in bold capitalized letters at the bottom of the page: **"THE INFORMATION I HAVE PROVIDED IS TRUE TO THE BEST OF MY KNOWLEDGE UNDER PENALTY OF PERJURY. IF I HAVE PROVIDED FALSE INFORMATION, I MAY BE SUBJECT TO A FINE OF UP TO TEN THOUSAND DOLLARS (\$10,000) OR IMPRISONMENT FOR UP TO TEN (10) YEARS, OR BOTH, UNDER FEDERAL OR STATE LAWS."**

(iv) The voter statement shall include a statement that the voter resides at the address on his or her application.

(v) The voter statement shall include a statement for a first-time voter who registers by mail: "If I am a newly registered voter of this county and this is the first time I am voting in this county, I am enclosing a copy of a current and valid photo identification card or a current utility bill, bank statement, government check, paycheck, or other government document that shows my name and address."

(B) Blanks shall be provided for the voter to provide his or her printed name, signature, mailing address, residential voting address, date of birth, printed name and address of the administrator, authorized agent, or designated bearer, signature of administrator, authorized agent, or designated bearer, and address of the administrator, authorized agent, or designated bearer.

(C)(i) The voter statement shall include a sworn statement portion that may be completed by the voter stating that the voter is registered to vote and that he or she is the person who is registered.

(ii) The sworn statement portion of the voter statement is not required to be notarized, but the voter shall execute the sworn statement under penalty of perjury;

(5) A sealable envelope upon which shall be printed or written the words: "Return Envelope", the address of the county clerk, the precinct of the voter, and the words: "ABSENTEE BALLOT,, ELECTION"; and

(6) An authorized agent authorization form, as follows:

"AGENT AUTHORIZATION FORM

If applicable, fill out and sign this form and place it in the Return Envelope

I hereby authorize(insert his or her name) as my authorized agent, to deliver this ballot as I am medically unable to vote on election day. An affidavit verifying my medical status as unable to deliver the application or to vote on the day of the election is attached or has been provided with my application.

.....
Signature of voter

.....
Printed name of voter

.....
 Address of voter

.....
 Date of birth of voter.”

(c)(1) Except for absentee ballots mailed to an address outside the county in which the applicant is registered, an absentee ballot shall be mailed to the address that appears on the applicant’s registration record or absentee ballot application if the voter is temporarily at a different address.

(2) The county clerk shall not mail more than two (2) absentee ballots to the same address unless:

(A) The address is outside the territorial limits of the United States;

(B) The address is for a long-term care or residential care facility licensed by the state; or

(C) There are more than two (2) persons lawfully registered at the same address.

(d) The county clerk shall not deliver an absentee ballot to any person other than the absentee voter unless the person picking up the ballot provides current and valid photographic identification to the county clerk that he or she is:

(1) The voter’s:

(A) Designated bearer; or

(B) Authorized agent; or

(2) The administrator of a long-term care or residential care facility licensed by the state in which the voter resides.

(e) The county clerk shall not provide more than two (2) absentee ballots per election to any designated bearer or authorized agent, nor shall the county clerk accept delivery of more than two (2) absentee ballots per election from any designated bearer or authorized agent.

(f) A designated bearer shall be allowed to pick up only two (2) absentee ballots from the county clerk only during the fifteen (15) days prior to a school election, special election, preferential primary election, or general election and seven (7) days prior to a runoff election, including a general primary election.

(g) Upon delivery of an absentee ballot to an individual authorized to receive an absentee ballot, the county clerk shall mark the electronic voter registration list and the precinct voter registration list to indicate that an absentee ballot has been delivered to the voter.

(h) The county clerk or other designated election official providing materials to qualified voters shall not distribute:

(1) Unsolicited absentee ballot applications to electors; or

(2) Unsolicited absentee ballots to electors.

(i) The county clerk and other designated election officials providing materials to qualified voters may:

(1) Display a printable or downloadable absentee ballot application form on the internet;

(2) Post links to the absentee ballot application form on social media of any type; and

(3) Make paper copies of absentee ballot application forms available for distribution or to be available upon request by a qualified voter in:

(A) The county clerk's office; or

(B) Other governmental offices.

History. Acts 1969, No. 465, Art. 9, § 7; 1971, No. 261, § 25; 1983, No. 430, § 4; 1985, No. 567, § 3; 1985, No. 568, § 3; A.S.A. 1947, § 3-907; Acts 1987, No. 843, § 3; 1989, No. 912, § 8; 1993, No. 1201, § 3; 1995, No. 103, § 1; 1997, No. 1092, § 6; 1999, No. 918, § 2; 1999, No. 1243, §§ 1, 2; 1999, No. 1344, § 1; 1999, No. 1538, § 1; 2001, No. 1379, § 1; 2003, No. 647, § 1; 2003, No. 994, § 10; 2003, No. 1202, § 2; 2003, No. 1275, §§ 2, 3; 2005, No. 880, § 4; 2005, No. 2193, § 3; 2007, No. 543, § 4; 2007, No. 556, § 7; 2009, No. 26, § 2; 2009, No. 250, §§ 9, 10; 2009, No. 375, § 2; 2013, No. 1424, §§ 6-8; 2017, No. 633, § 11; 2021, No. 736, §§ 4-7.

Amendments. The 2021 amendment substituted "shall" for "must" in (a)(1)(A); inserted "uniform" and added "created and approved by the State Board of Election Commissioners" in (b)(4)(A)(i); substituted "SHALL" for "MUST" in (b)(4)(A)(ii); inserted "mailing address, residential voting" in (b)(4)(B); and added (h) and (i).

7-5-411. Methods of voting absentee.

(a) Absentee voting may be accomplished in one (1) of the following methods and in no other manner:

(1)(A) By delivery of the ballot by mail that must be received in the office of the county clerk of the county of residence of the voter not later than 7:30 p.m. on election day.

(B)(i) However, except as provided in subdivision (a)(1)(B)(ii) of this section, by ballots applied for not later than thirty (30) days before the election by qualified electors outside the United States on election day that are signed, dated, postmarked, and mailed by the voters no later than the day of the election and received by the county clerk no later than 5:00 p.m. ten (10) calendar days after the date of the election.

(ii) The absentee ballots of armed services personnel serving in active status shall be counted if received by the county clerk no later than 5:00 p.m. ten (10) calendar days after the date of the election and if the absentee ballots were executed no later than the date of the election.

(C) Each absentee ballot shall be mailed separately by the voter and shall not be included with any other absentee ballot in a bulk mailing, except that an administrator of a long-term care or residential care facility licensed by the State of Arkansas or hospital may mail the absentee ballots of the residents and patients by bulk mail. Absentee ballots in any bulk mailing not otherwise permitted in this subsection shall not be counted;

(2) By delivery of the ballot to the physical office of the county clerk of the county of residence of the voter not later than 7:30 p.m. on election day by the authorized agent of the absentee voter who is medically unable to vote at the regular polling site, upon proper

verification of the signature of the voter by the county clerk and validation of the identity of the authorized agent;

(3) By delivery of the ballot to the physical office of the county clerk of the county of residence of the voter not later than the time the county clerk's office regularly closes on the Friday before election day by the registered voter, designated bearer, or administrator of the absentee voter, upon proper verification of the signature of the voter by the county clerk and validation of the identity of the registered voter, designated bearer, or administrator; or

(4) The voter may deliver the ballot to the physical office of the county clerk of the county of his or her residence not later than the close of regular business hours on the Friday before the election.

(b) Any person to whom an absentee ballot is delivered according to the precinct voter registration list but who elects to vote by early voting or to vote at his or her polling site on election day shall be permitted to cast a provisional ballot.

History. Acts 1969, No. 465, Art. 9, § 8; 2009, No. 250, §§ 11, 12; 2021, No. § 10; 1970 (1st Ex. Sess.), No. 28, § 1; 1981, No. 685, § 2; 1983, No. 430, § 5; 1985, No. 567, § 4; 1985, No. 568, § 4; 1985, No. 612, § 2; 1985, No. 1024, § 1; A.S.A. 1947, § 3-910; Acts 1987, No. 843, § 4; 1989, No. 912, § 9; 1997, No. 1092, § 7; 1999, No. 491, § 1; 1999, No. 1538, § 4; 1999, No. 1586, § 1; 2001, No. 1257, § 1; 2001, No. 1767, § 1; 2003, No. 273, § 1; 2003, No. 1275, § 4; 2005, No. 2193, § 4; 2007, No. 543, § 5; 2007, No. 556, § 8; 2009, No. 250, §§ 11, 12; 2021, No. 973, § 2.

Amendments. The 2021 amendment, in (a)(2), inserted "physical office of the" and deleted "the designated bearer, administrator, or" following "election day by"; inserted (a)(3); redesignated former (a)(3) as (a)(4); and, in (a)(4), inserted "physical office of the" and substituted "Friday before the election" for "day before the election".

7-5-412. Marking and return of absentee ballots — Delivery of mailed absentee ballots.

(a) Upon receiving the blank absentee ballot, voter statement, and envelopes, whether in the office of the county clerk or elsewhere, the voter shall mark the absentee ballot and place the absentee ballot in the provided envelope. He or she shall then seal the envelope containing the absentee ballot and place it in the other provided outer envelope with the following:

(1) The completed and executed voter statement, including identification of the designated bearer, authorized agent, or administrator when appropriate; and

(2)(A) Verification of voter registration; or

(B) A copy of a current and valid photographic identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the first-time voter, for first-time voters who registered by mail. However, this requirement does not apply if:

(i) The voter registered to vote by mail and provided the identification at that time; or

(ii) The first-time voter registered to vote by mail and submitted his or her driver's license number or at least the last four (4) digits of his or her Social Security number at the time and this information matches the information in an existing state identification record bearing the same number, name, and date of birth as provided in the registration.

(b) A voter who desires to cast an absentee ballot but who does not meet the identification requirements of subdivision (a)(2) of this section may cast his or her absentee ballot by mail, and the absentee ballot shall be considered as a provisional ballot.

(c) After recording receipt of the absentee ballot in the electronic voter registration system, absentee ballots received by mail on election day before the polls close shall be delivered promptly by the county clerk to the election officials designated to canvass and count absentee ballots.

History. Acts 1969, No. 465, Art. 9, § 9; 2017, No. 633, § 12; 2021, No. 249, § 11; 1970 (1st Ex. Sess.), No. 28, § 2; § 5.
A.S.A. 1947, § 3-911; Acts 1997, No. 1092, § 8; 2003, No. 647, § 2; 2003, No. 994, § 11; 2005, No. 880, § 5; 2007, No. 556, § 9; 2009, No. 250, § 13; 2013, No. 1424, (b).

Amendments. The 2021 amendment deleted (b)(2) and redesignated (b)(1) as (b).

7-5-416. Counting of absentee ballots.

(a)(1) The election officials for absentee ballots may meet in a place designated by the county board of election commissioners no earlier than the Tuesday before the election for the purpose of opening the outer envelope, processing, and canvassing of absentee ballot paper work of the outer envelope and no earlier than 8:30 a.m. on election day for the purpose of opening the inner absentee ballot envelope and counting the absentee ballots.

(2) The county board of election commissioners shall give public notice of the time and location of the opening, processing, canvassing, and counting of absentee ballots and early voting ballots as provided in § 7-5-202.

(3) The county clerk shall provide the county board of election commissioners with a daily count of absentee applications received, to be reported weekly or upon request of the county board of election commissioners.

(4) The county clerk shall provide the county board of election commissioners with a daily count of absentee ballots received, to be reported weekly or upon request of the county board of election commissioners.

(5) The county clerk shall forward the following items to the election officials designated by the county board of election commissioners to open, process, canvass, and count absentee ballots:

(A) The absentee ballot applications sorted alphabetically and by precinct;

(B) The absentee ballots; and

(C) A written report containing the following information:

(i) The number of absentee ballot applications received by the county clerk;

(ii) The number of absentee ballots sent by the county clerk;

(iii) The number of absentee ballots returned to the county clerk;

(iv) The number of absentee ballots rejected by the county clerk and the reason for the rejection;

(v) The number of absentee ballots marked as received on the paper absentee ballot applications list; and

(vi) If the number of absentee ballots returned to the county clerk and the number of absentee ballots marked as received on the paper absentee ballot lists are different and the reason for the difference is known, the reason for the difference.

(6) The processing and counting of absentee ballots shall be open to the public, and candidates and authorized poll watchers may be present in person or by a representative designated in writing under § 7-5-312 during the opening, processing, canvassing, and counting of the absentee ballots as provided in this subchapter.

(7)(A) Absentee and early votes shall be counted prior to the closing of the polls on election day as provided under this section.

(B)(i) The county board of election commissioners shall report by precinct the initial count of early votes and absentee ballot votes to the Secretary of State as provided under § 7-5-701 as soon as practical after the polls close on election day.

(ii) No election results of the precinct shall be printed, posted, or released until after the polls close on election day.

(8)(A) After the outer envelope of an absentee ballot is opened, a county clerk and deputies of the county clerk shall not have access to:

(i) The absentee ballots;

(ii) Absentee ballot paperwork; or

(iii) The inner envelope of an absentee ballot.

(B) The county board of election commissioners may grant a county clerk or deputies of the county clerk access to the absentee ballot materials in subdivision (a)(8)(A) of this section if the access is granted by an affirmative vote of the county board of election commissioners for a specific purpose and for a designated election.

(b)(1) The opening, processing, counting, and canvassing of absentee ballots shall be conducted as follows:

(A) One (1) of the election officials shall open outer absentee ballot envelopes one by one and verify the contents;

(B) If the required materials are properly placed in the outer absentee ballot envelope, the election official shall proceed to read aloud from the voter statement the name of the voter;

(C) If the required materials are not properly placed in the outer absentee ballot envelope, a second election official shall open the inner absentee ballot envelope to verify the contents no earlier than 8:30 a.m. on election day;

(D) If all required materials are present within one (1) or the other envelope, the election officials shall put the materials in the proper

envelope while preserving the secrecy of the voter's ballot and shall proceed to read aloud from the voter statement the name of the voter and the voting precinct in which the voter claims to be a legal voter;

(E) As each outer envelope is opened and the name of the voter is read, the election officials for the absentee box shall list the name and voting precinct of the voter;

(F)(i) After the election official reads aloud from the statement, the election officials shall compare the name, address, date of birth, and signature of the voter's absentee application with the voter's statement and, for first-time voters who registered by mail, the first-time voter's identification document unless the voter previously provided identification at the time of mailing the voter registration application.

(ii) If the county board of election commissioners determines that the absentee application and the voter's statement do not compare as to name, residential voting address, date of birth, and signature, the absentee ballot shall not be counted.

(iii) If a first-time voter fails to provide the required identification with the absentee ballot or at the time of mailing the voter registration application, then the absentee application, absentee ballot envelope, and voter's statement shall be placed in an envelope marked "provisional" and the absentee ballot shall be considered a provisional ballot;

(G)(i) The election officials shall compare the name and address of the bearer, agent, or administrator written on the absentee ballot return envelope with the information on the voter statement. If the information does not match, then the outer envelope, absentee application, secrecy envelope containing the ballot, and the voter's statement shall be placed in an envelope marked "provisional" and the absentee ballot shall be considered a provisional ballot.

(ii) The election officials shall compare the name of the bearer written on the absentee ballot application with the information on the voter statement, and if the information does not compare, the ballot shall be a provisional ballot.

(iii) An absentee ballot designated as a provisional ballot for the lack of a designation of, or name of, a designated bearer shall be counted only if the county board of election commissioners does not determine that the provisional ballot is invalid and should not be counted based on other grounds;

(H) If the absentee voter fails to return the voter statement, the vote shall not be counted;

(I) Failure of the voter to submit the required absentee materials in the proper envelopes shall not be grounds for disqualifying the voter;

(J) If the voter statement does not authorize a bearer, agent, or administrator to receive or return his or her absentee ballot and the ballot was received or returned by a bearer, agent, or administrator, the vote shall not be counted;

(K) If no challenge is made by a qualified poll watcher, the election official shall remove the inner envelope, without opening the inner envelope containing the ballot, and place it in the ballot box without marking it in any way;

(L)(i) After all of the outer envelopes have been opened, the election officials of the absentee box shall preserve all the statements of voters and the voters' identification documents and deliver them to the county clerk, who shall file and keep them for the same length of time after the election as is required for retention of other ballots.

(ii) The voter statements shall be made available for public inspection and copying during regular business hours no earlier than 8:30 a.m. on the day following the actual delivery of the statement of the number of outstanding ballots and provisional ballots to the Secretary of State, and declaration of preliminary and unofficial results of the election under § 7-5-701(a)(3)(C).

(iii) The voters' identification documents shall not be subject to public inspection except as part of a judicial proceeding to contest the election;

(M) When all of the inner envelopes containing the ballots have been placed in the ballot box, the ballot box shall be shaken thoroughly to mix the ballots; and

(N) The ballot box shall be opened and the ballots canvassed and counted.

(2) No election results shall be printed or released prior to the closing of the polls on election day.

(c) If any person casting an absentee ballot dies before the polls open on election day, his or her ballot shall be accepted by the county clerk if the absentee ballot is:

(1) Signed, dated, postmarked, and mailed before the date of death;

(2) Signed, dated, and delivered to the county clerk by a designated bearer, authorized agent, or administrator before the date of death; or

(3) The ballot of a member of the armed services or Arkansas National Guard in active duty or state active duty executed before the date of death.

(d) It is the intent of this section to require the election officials for absentee ballots to meet and process, canvass, and count absentee ballots according to this section prior to the closing of the polls on election day.

(e)(1) Absentee votes shall be cast on paper ballots.

(2)(A) The ballots shall first be counted for write-in votes by the election officials.

(B) Then, at the discretion of the county board of election commissioners, the ballots may be either hand counted or counted on an electronic vote tabulating device.

(f)(1) Absentee ballots marked as "special runoff ballots" received from a qualified voter from one (1) of the categories in § 7-5-406(a) shall be opened for general primary elections and general runoff elections according to the procedures described in subsection (b) of this section.

(2) However, in counting the special runoff ballot, one (1) of the election officials shall open the envelope containing the special runoff ballot and read the numbers indicated next to the names of the two (2) candidates in the general primary election or in the general runoff election.

(3) The candidate with the highest ranking shall receive the vote.

(4) A special runoff ballot received with the preferential primary absentee ballot shall be counted in the general primary election, and a special runoff ballot received with the general election absentee ballot shall be counted in the general runoff election.

(5) The Secretary of State shall prepare instructions for opening, counting, and canvassing special runoff ballots and provide the instructions to each county board of election commissioners.

History. Acts 1969, No. 465, Art. 9, § 13; 1971, No. 261, § 21; A.S.A. 1947, § 3-913; Acts 1989, No. 505, § 1; 1993, No. 845, §§ 1-3; 1997, No. 1092, § 12; 1999, No. 1368, § 1; 2003, No. 647, §§ 3, 4; 2003, No. 994, § 12; 2003, No. 1154, § 3; 2003, No. 1744, § 1; 2005, No. 138, § 2; 2005, No. 751, § 2; 2005, No. 880, § 6; 2007, No. 261, § 2; 2007, No. 556, § 13; 2009, No. 250, § 14; 2009, No. 959, §§ 19, 20; 2013, No. 466, § 1; 2013, No. 1211, §§ 3, 4; 2013, No. 1424, § 10; 2017, No. 790, §§ 1-3; 2019, No. 462, § 9; 2021, No. 736, §§ 8-14.

Amendments. The 2019 amendment, in (c)(3), inserted “or Arkansas National Guard” and “or state active duty”.

The 2021 amendment inserted “of the outer envelope” in (a)(1); inserted (a)(3) and (a)(4); redesignated former (a)(3) through (a)(5) as (a)(5) through (a)(7); substituted “and” for “or” in (a)(5)(A); added (a)(8); added “no earlier than 8:30 a.m. on election day” in (b)(1)(C); in (b)(1)(F)(ii), inserted “absentee” preceding “application” and inserted “residential voting”; redesignated former (b)(1)(G) as (b)(1)(G)(i); added (b)(1)(G)(ii) and (b)(1)(G)(iii); in (b)(1)(L)(ii), inserted “and copying” and added the language beginning with “no earlier than”; and substituted “ballot” for “vote” following “his or her” in the introductory language of (c).

7-5-418. Early voting.

(a)(1)(A) Except as provided in subdivision (a)(1)(B) of this section, early voting shall be available to any qualified elector who applies to the county clerk’s designated early voting location, beginning fifteen (15) days before a preferential primary or general election between the hours of 8:00 a.m. and 6:00 p.m. Monday through Friday and 10:00 a.m. and 4:00 p.m. Saturday and ending at 5:00 p.m. on the Monday before the election.

(B) Early voting shall not be available on state or county holidays.

(2)(A) Except as provided in subdivision (a)(2)(B) of this section, on all other elections, including the general primary and general runoff elections, early voting shall be available to any qualified elector who applies to the county clerk during regular office hours, beginning seven (7) days before the election and ending on the day before the election day at the time the county clerk’s office regularly closes.

(B) If an annual school election is held at the same time as the preferential primary election or general election, early voting for the annual school election shall comply with subdivision (a)(1)(A) of this section.

(b)(1)(A) The county board of election commissioners may decide to hold early voting at additional polling sites outside the offices of the county clerk on any of the days and times provided for in subsection (a) of this section, if it so chooses.

(B) The county board of election commissioners shall determine by unanimous vote the location of additional polling sites for early voting.

(2) The county board of election commissioners shall appoint the election officials for the additional early voting polling site or sites in the same manner as election officials are appointed for election day.

(3)(A) The county board of election commissioners shall notify the county clerk of its decision to hold early voting at additional polling sites outside the office of the county clerk within ten (10) days of the decision.

(B) If the county board of election commissioners decides to hold early voting at one (1) or more conveniently located polling sites on the days and times under subsection (a) of this section, the county clerk may choose not to hold early voting within the office of the county clerk. The county clerk shall notify the county board of election commissioners within ten (10) days of the receipt of notice from the county board of election commissioners regarding early voting at additional polling sites.

(4) The early voting election official shall record the date on all pages of the early voting roster or early voting request form and keep a daily record of the number of early ballots cast.

(5) All voted ballots and unvoted ballots and all related election materials at each additional early voting polling site shall be stored in a secure location in the county courthouse or in a secure location as determined by the county board of election commissioners immediately after the close of the additional polling sites each day that early voting is conducted there.

(c) Before a person is permitted to cast an early vote, the county clerk or election official shall:

(1) Request the voter to identify himself or herself by stating his or her name, date of birth, and address in order to verify his or her registration;

(2) Request that the voter verify his or her registration by providing a document or identification card that meets the requirements of Arkansas Constitution, Amendment 51, § 13, if required by that section;

(3) If the voter's name or address is not the same as that in the county voter registration record files, request the voter to complete an updated voter registration application form;

(4) Request the voter to sign an early voting roster or early voting request form that identifies his or her name, address, date of birth, and the date on the roster or form;

(5) Enter the voter's precinct number on the early voting roster or early voting request form;

(6) Verify if a person requested an absentee ballot according to the precinct voter registration list; and

(7) Permit a person to cast a provisional ballot if the person received an absentee ballot according to the precinct voter registration list.

(d)(1) If the voter is not listed in the county voter registration record files and the county clerk is unable to verify the voter's registration and if the voter contends that he or she is eligible to vote, then the voter may vote a provisional ballot that shall be counted only upon verification of the voter's registration status.

(2)(A) If the voter fails to present verification of voter registration, the election official shall follow the procedure in Arkansas Constitution, Amendment 51, § 13.

(B)(i) A person who is a resident of a long-term care or residential care facility licensed by the state is not required to provide verification of voter registration before voting.

(ii) A person not required to provide verification of voter registration under subdivision (d)(2)(B)(i) of this section shall provide documentation from the administrator of the facility attesting that the person is a resident of the facility.

(e) The county clerk or county board of election commissioners shall furnish voting locations that adequately allow the early voter to personally and secretly execute his or her ballot.

(f) Except as provided in this section, early voting shall be conducted in the same manner as voting on election day. Conduct that is prohibited or restricted on election day shall be subject to the same prohibitions and restrictions on the days on which early voting is conducted.

(g)(1) The county clerk shall electronically record in the permanent voter registration record of an elector who voted at an early voting location to indicate that the elector has voted.

(2) Except as provided under subdivision (g)(3) of this section, the county clerk shall electronically record in the permanent voter registration record no later than twenty-four (24) hours after the elector has voted.

(3) If the elector votes on a Friday or Saturday, the county clerk shall electronically record in the permanent voter registration record no later than the close of business on the Monday following the vote.

History. Acts 1995, No. 686, § 7; 1995, No. 948, § 7; 1997, No. 967, § 1; 1997, No. 1092, § 14; 2003, No. 269, § 1; 2005, No. 655, § 1; 2005, No. 880, § 8; 2005, No. 1690, § 1; 2007, No. 556, § 15; 2007, No. 987, § 1; 2009, No. 375, § 3; 2009, No. 959, § 21; 2013, No. 595, § 6; 2013, No.

979, § 1; 2013, No. 1059, § 1; 2016 (3rd Ex. Sess.), No. 14, § 6; 2016 (3rd Ex. Sess.), No. 15, § 6; 2017, No. 633, § 13; 2017, No. 910, § 7; 2021, No. 1063, § 8.

Amendments. The 2021 amendment added (c)(6) [now (c)(6) and (c)(7)].

SUBCHAPTER 5 — VOTING MACHINES

SECTION.

7-5-504. Machine specifications.

7-5-515. Preparation of machines for election — Logic and accuracy testing and public testing.

7-5-504. Machine specifications.

No make of voting machine shall be approved for use unless it is so constructed that:

- (1) It will ensure secrecy to the voter in the act of voting;
- (2) It shall provide the capacity for voting for or against as many questions as may be submitted;
- (3) It shall permit the voter to vote separately for the candidate of his or her choice for each office or position to be voted upon and to vote separately on each issue to be decided by election;
- (4) It shall permit the voter to vote for as many persons for an office for whom he or she is lawfully entitled to vote, but no more;
- (5) It shall prevent the voter from voting for the same candidate or question more than one (1) time;
- (6) It shall permit the voter to verify in a private and independent manner the votes selected by the voter on the ballot before the ballot is cast;
- (7) It shall provide the voter with the opportunity in a private and independent manner to change the ballot or correct any error before the ballot is cast;
- (8) If it is a direct recording electronic voting machine, it shall include a voter-verified paper audit trail, except as provided under § 7-5-301(b);
- (9) If the voter is legally entitled to select only one (1) candidate for an office but the voter selects more than one (1) candidate for the office, it shall notify the voter before the ballot is cast that he or she has selected more than one (1) candidate for the office on the ballot, notify the voter of the effect of casting multiple votes for the office, and provide the voter with the opportunity to correct the ballot before the ballot is cast;
- (10) It shall permit the voter to vote for or against any question on which he or she may have the right to vote, but no other;
- (11) It shall be capable of being programmed to display for voting purposes only the voter's proper ballot;
- (12) It shall correctly register and record and accurately count all votes cast for any and all persons and for or against any and all questions;
- (13) It shall be provided with a protective device to prevent any unauthorized operation of the machine before or after the election;
- (14) It shall be provided with a counter or tabulator which shall show at all times during the election how many persons have voted;

(15) It shall be so equipped and constructed so that it can be made inaccessible to further voting after the polls have closed and all voters who were in line at the time the polls closed have voted;

(16) It shall permit a voter to vote in any election for any person for whom he or she wishes to vote when the person's name does not appear upon the voting machine;

(17) It bears a unique numerical, alphabetical, or alphanumeric sequence identifier that distinguishes it from any other machine;

(18) It shall be provided with a screen, hood, or partition which shall allow the voter to vote a secret ballot;

(19) It shall be capable of being operated from an alternate power source should the need arise;

(20) It shall permit voters with disabilities to vote unassisted if they so desire;

(21) It shall be:

(A) Qualified by an authorized federal agency or national testing and standards laboratory which is acceptable to the Secretary of State;

(B) Approved by the State Board of Election Commissioners; and

(C) Selected by the Secretary of State; and

(22) It can operate without a connection to the internet or an external network by:

(A) A cable;

(B) A wireless modem; or

(C) Any other mechanism or process.

History. Acts 1969, No. 465, Art. 12, § 2; A.S.A. 1947, § 3-1202; Acts 2005, No. 654, § 1; 2005, No. 2233, § 11; 2015, No. 1218, § 5; 2021, No. 735, § 2.

Amendments. The 2021 amendment added (22).

7-5-515. Preparation of machines for election — Logic and accuracy testing and public testing.

(a) Immediately upon the proper certification of candidates and questions, the county board of election commissioners shall oversee programming of the election, proof the ballots, prepare the voting machines, and test and adjust the voting machines for the election.

(b) In performing these functions, the county board of election commissioners may be assisted by experts appointed or employed by the county board of election commissioners.

(c)(1)(A) As soon as the election media is prepared, but no later than seven (7) days before the beginning of voting, the county board of election commissioners, with respect to all elections except a runoff election under subdivision (c)(1)(B) of this section, shall conduct logic and accuracy testing by having all election media tested to ascertain that the voting system has been correctly configured and will correctly tabulate the votes cast for all offices and on all measures.

(B) As soon as the election media is prepared, but no later than five (5) days before the beginning of voting, the county board of election

commissioners, with respect to a runoff election, shall conduct logic and accuracy testing by having all runoff election media tested to ascertain that the voting system has been correctly configured and will correctly tabulate the votes cast for all offices and on all measures.

(2) In addition to the logic and accuracy testing under subdivision (c)(1) of this section, the county board of election commissioners shall conduct public testing as follows:

(A) The county board of election commissioners shall give public notice of the time and place of the test at least forty-eight (48) hours prior to the public test by publication one (1) time in one (1) or more daily or weekly newspapers published in the town, city, or county using the machines if a newspaper is published in the town, city, or county;

(B) The public test shall be open to representatives of the political parties, candidates, media, and the public;

(C)(i) The public test shall be conducted by processing a preaudited group of test ballots that are to be voted on the machines so as to record a predetermined number of valid votes for each candidate and on each measure.

(ii) The public test shall include for each office one (1) or more ballots which have votes in excess of the number allowed by law in order to test the ability of the machines to reject the votes; and

(D) If any error is detected, the cause shall be ascertained and corrected and an errorless count shall be made before the machine is approved.

(d) After completion of the logic and accuracy test and the public test, the ballots and programs used shall be sealed, retained, and disposed of as provided by law.

(e) After completion of the logic and accuracy test and the public test, the county board of election commissioners shall certify the accuracy of the voting system by:

(1) Sending a copy of the electronic results to the Secretary of State; and

(2) Filing the test results with the county clerk.

History. Acts 1969, No. 465, Art. 12, §§ 10, 13; A.S.A. 1947, §§ 3-1210, 3-1213; Acts 1997, No. 446, § 10; 2005, No. 2233, § 20; 2009, No. 1480, § 33; 2015, No. 1218, § 9; 2017, No. 164, § 1; 2019, No. 966, § 6[5].

Amendments. The 2019 amendment, in (a), inserted "oversee programming of the election, proof the ballots" and deleted "oversee their programming" preceding "and test and adjust".

SUBCHAPTER 6 — PAPER BALLOTS AND ELECTRONIC VOTE TABULATING DEVICES

SECTION.

7-5-602. Ballots — Number — Official —
Marking device — Spoiled.

7-5-602. Ballots — Number — Official — Marking device — Spoiled.

(a)(1) The county board of election commissioners of each county in this state using paper ballots counted by hand at the polling site, paper ballots counted by an electronic vote tabulating device at the polling site, or paper ballots cast at a polling site and counted at a central location shall provide for each election precinct one hundred fifty (150) printed ballots for each one hundred (100) or fraction of one hundred (100) electors voting on paper ballots at the last preceding comparable election.

(2) The total number of ballots required to be printed for each election precinct shall not exceed one hundred five percent (105%) of the total number of registered voters for the respective precinct.

(b) A ballot shall not be received or counted in any election to which this subchapter applies unless it is provided by the county board of election commissioners under this section.

(c) At all elections in counties that use paper ballots and in which those ballots are counted by hand, the ballots shall be marked using permanent ink.

(d)(1) A voter who shall by accident or mistake mar or spoil any ballot so that he or she cannot conveniently or clearly vote on the ballot may return it to the poll workers and receive another ballot, not to exceed three (3) ballots in total.

(2)(A) Spoiled ballots shall be cancelled by a poll worker by using a stamp marked "CANCELLED" on the face of the ballot.

(B) The poll worker shall write the date and time, and print and sign his or her name next to the stamp marked "CANCELLED".

(3) The cancelled ballots shall be preserved separately from other ballots and returned to the county board of election commissioners and shall be open to public inspection.

History. Acts 2009, No. 1480, § 36; rewrote and redesignated (d)(2) as 2021, No. 736, § 15.

Amendments. The 2021 amendment

(d)(2)(A); and added (d)(2)(B).

SUBCHAPTER 7 — RETURNS AND CANVASS

SECTION.

7-5-701. Declaration of results — Certification, delivery, and custody of returns.

SECTION.

7-5-702. Preservation of ballots, stubs, certificates, and other election materials.

7-5-701. Declaration of results — Certification, delivery, and custody of returns.

(a)(1) No earlier than forty-eight (48) hours after the election and no later than the fifteenth calendar day after the election, the county board of election commissioners, from the certificates and ballots received

from the several precincts, shall proceed to ascertain, declare, and certify the result of the election to the Secretary of State.

(2) Unopposed candidates, other than candidates for mayor, Governor, and circuit clerk, shall be separately declared and certified to the Secretary of State as elected in the same manner as if the candidate had been voted upon at the election.

(3)(A) As results are received and tabulated on election night for all state and federal elections, the county board of election commissioners shall declare preliminary and unofficial results of the election as soon as early voting, absentee, or individual precinct results are tabulated on election night and immediately shall transmit the results by precinct to the Secretary of State through the election night reporting interface provided by the Secretary of State.

(B) The county board of election commissioners may, by agreement with the county clerk, transmit the results to the county clerk who immediately shall transmit the results by precinct to the Secretary of State under subdivision (a)(3)(A) of this section.

(C) On election night for all state and federal elections, immediately after the count of the vote is complete, the county board of election commissioners shall:

(i) Declare preliminary and unofficial results of the election, including a statement of the number of outstanding:

(a) Ballots of voters who requested ballots under the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20301 et seq.; and

(b) Provisional ballots; and

(ii) Immediately transmit the results by precinct to the Secretary of State through the election night reporting interface provided by the Secretary of State.

(D) The county board of election commissioners may, by agreement with the county clerk, transmit the results to the county clerk who shall immediately transmit the results by precinct to the Secretary of State as described in subdivision (a)(3)(C) of this section.

(E) The Secretary of State may establish policies and procedures to accomplish the objectives set forth under this section.

(4) Within nineteen (19) calendar days after any general, special, or school election, the county board of election commissioners shall deliver a certificate of election to the person having the highest number of legal votes for any county office.

(b) The county board of election commissioners shall also file in the office of the clerk of the county court a certificate setting forth in detail the result of the election in each precinct.

(c)(1) No earlier than forty-eight (48) hours after the election and no later than the fifteenth calendar day after the election, the county board of election commissioners shall deposit certified copies of the abstracts of the returns of the election for members of the United States Congress and for all executive, legislative, and judicial officers in the nearest post office on the most direct route to the seat of government and directed to the Secretary of State.

(2) Separate from an abstract, the county board of election commissioners shall certify all unopposed candidates for these offices as elected in the same manner as if the candidate had been voted upon at the election.

(3) The county board of election commissioners shall not receive compensation for election duties after the election until the election results have been certified and delivered to the Secretary of State.

(4) The Secretary of State shall file a complaint with the State Board of Election Commissioners under § 7-4-120 if the county board of election commissioners does not comply with subdivision (c)(1) of this section.

(d)(1) It shall at the same time enclose in a separate envelope and direct to the Speaker of the House of Representatives, in care of the Secretary of State, at the seat of government, a certified copy of the abstract of votes given for Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, and Attorney General.

(2) It is the duty of the Secretary of State to safely keep the returns addressed to the Speaker of the House of Representatives until they shall be required for the purpose of ascertaining and declaring the result of the election as prescribed in Arkansas Constitution, Article 6, § 3.

History. Acts 1969, No. 465, Art. 8, § 1; § 1; 2013, No. 1211, § 5; 2017, No. 730, 1971, No. 261, § 14; A.S.A. 1947, § 3-801; § 3; 2019, No. 254, § 2; 2021, No. 448, Acts 1993, No. 512, § 3; 1993, No. 966, § 8. § 1; 1995, No. 441, § 1; 1995, No. 723, § 1; 1995, No. 724, § 1; 1999, No. 1304, § 1; 2001, No. 1475, § 1; 2003, No. 131, § 1; 2005, No. 731, § 1; 2005, No. 895, § 1; 2005, No. 1677, § 5; 2013, No. 1058,

Amendments. The 2019 amendment inserted “city clerk” in (a)(2).

The 2021 amendment deleted “city clerk” preceding “and circuit clerk” in (a)(2).

CASE NOTES

Mootness.

Amendment to state constitution was presented to the voters, who cast their ballots, the votes had been counted, the amendment was approved, and the deadline for certification of the election had

passed; appellant failed to seek a stay of certification and a judgment would have no practical legal effect, such that the issue was moot. *Kimbrell v. Thurston*, 2020 Ark. 392, 611 S.W.3d 186 (2020).

7-5-702. Preservation of ballots, stubs, certificates, and other election materials.

(a) After the election has been finally certified by the county board of election commissioners, the county board of election commissioners shall retain the custody of and safely keep in a sealed container appropriately marked in a secure location in the county courthouse or other county storage facility all ballots, ballot stubs, and certificates returned to it from the several precincts for a period of twenty (20) days, after which time the ballots and certificates shall be stored in a secure location in the county courthouse or other county storage facility for a

period of two (2) years from the date of the election, unless the county board of election commissioners shall be sooner notified in writing that:

(1) The election of some person voted for at the election and declared to have been elected has been contested;

(2) Criminal prosecution has begun before a tribunal of competent jurisdiction against any officer of election or person voting thereat for any fraud in the election; or

(3) The results of the election will be audited by the State Board of Election Commissioners under § 7-4-121.

(b) If the county board of election commissioners is notified as provided in subsection (a) of this section, then so many of the ballots and certificates as may relate to matters involved in the contest or any prosecution shall be preserved for use as evidence in the contest or prosecution.

(c) During the time the ballots may be retained or stored, the package containing them shall not be opened by anyone unless:

(1) Directed to do so by some competent tribunal before which an election contest or prosecution is pending in which the ballots are to be used as evidence; or

(2) Upon written instruction signed by the Director of the State Board of Election Commissioners under § 7-4-121.

(d) For twenty (20) days, the county board of election commissioners shall retain the custody of ballot stubs in an appropriately marked, sealed container delivered to the county board of election commissioners from the several precincts, after which time they shall be stored in a secure location in the county courthouse or other county storage facility unless:

(1) An election contest has been filed;

(2) A criminal prosecution has been initiated in connection with the election; or

(3) Upon written instruction signed by the director under § 7-4-121.

(e) After a period of two (2) years, all marked ballots and ballot stubs may be destroyed in the following manner:

(1) The county board of election commissioners shall enter an order directing the destruction of marked ballots and ballot stubs;

(2) The county board of election commissioners shall make and retain a record of marked ballots and ballot stubs destroyed; and

(3) The county board of election commissioners shall file with the county clerk the order and record pertaining to marked ballots and ballot stubs destroyed.

History. Acts 1969, No. 465, Art. 8, § 2; A.S.A. 1947, § 3-802; Acts 1987, No. 492, § 1; 1997, No. 446, § 33; 2005, No. 953, § 1; 2005, No. 2233, § 47; 2009, No. 959, § 31; 2013, No. 236, § 2; 2017, No. 621, § 3; 2019, No. 888, §§ 3, 4.

Amendments. The 2019 amendment added (a)(3); redesignated part of (c) as

(c)(1); added (c)(2); in (d), substituted "board of election commissioners" for "treasurer" preceding "shall retain" and substituted "the county board of election commissioners" for "him or her"; redesignated part of (d) as (d)(1) and (d)(2); and added (d)(3).

SUBCHAPTER 8 — ELECTION CONTESTS

SECTION.

7-5-805. Contest of state legislative offices.

7-5-801. Right of action — Procedure.**CASE NOTES****Applicability.**

Petition of candidate, who brought a preelection attack on the eligibility of a competing Court of Appeals candidate, was compliant with Arkansas law despite lacking an affidavit. This section is a post-

election procedure; preelection attacks are governed by § 7-5-207(b), and that section does not have a verification requirement. *Barrett v. Thurston*, 2020 Ark. 36, 593 S.W.3d 1 (2020).

7-5-805. Contest of state legislative offices.

(a) Any contest to the eligibility, qualifications, or election to serve as a member of the Senate shall be in accordance with the rules and procedures for election contests as established by that chamber under its governing rules.

(b)(1)(A) Any action to contest eligibility, qualification, or election to serve as a member of the House of Representatives shall be initiated by filing a complaint with the Arkansas State Claims Commission.

(B) This procedure shall apply to House of Representatives election contests pursuant to Arkansas Constitution, Article 5, § 11, to contests of eligibility pursuant to Arkansas Constitution, Article 5, § 9, and to actions for expulsion pursuant to Arkansas Constitution, Article 5, § 12, except that a member of the House of Representatives shall be automatically suspended from the legislative process if a representative under felony criminal indictment is subsequently found guilty or pleads guilty.

(C)(i) If a representative under a felony criminal indictment in any federal or state court is subsequently found guilty or pleads guilty to the charges, then the Speaker of the House of Representatives shall immediately declare the representative suspended from the legislative process, and notification shall be given to the convicted representative, all members of the House of Representatives, the Chief Clerk of the House of Representatives, the Governor, the Secretary of State, and the Auditor of State.

(ii)(a) However, if a representative who was found guilty appeals that conviction, then the representative may petition the House Management Committee for a stay of the suspension from the legislative process, and the House Management Committee may grant a stay upon the filing of the petition and a notice of appeal to the relevant appellate court.

(b) The stay of the suspension shall continue until the appeal is complete or until the House of Representatives takes final action on the conviction.

(D) A representative suspended from the legislative process shall not participate in interim committee meetings nor in extraordinary or regular sessions of the General Assembly and shall not accept per diem and mileage but shall be eligible to retain the title of office and salary as a member of the General Assembly and is authorized to assist constituents and utilize legislative staff until a final action is taken by the House of Representatives.

(2) For House of Representatives election contests, the complaint shall be filed within fifteen (15) days after the election returns are certified by the county board of election commissioners. A responsive pleading shall be filed by the House of Representatives contestee within fifteen (15) days after receipt of the complaint unless an earlier or later date is set by the commission for good cause shown. Upon receipt of the complaint, the commission shall establish a schedule for discovery and hearing, which schedule shall allow the commission to take and review evidence presented by the parties and submit a nonbinding recommendation to the House of Representatives no later than five (5) days before the date fixed for the assembling of the General Assembly.

(3) For eligibility contests for the House of Representatives pursuant to Arkansas Constitution, Article 5, § 9, a complaint shall be filed at any time after the election of the individual to a seat in the House of Representatives. For action for expulsion from the House of Representatives pursuant to Arkansas Constitution, Article 5, § 12, the complaint shall be filed at any time permitted by law. A responsive pleading shall be filed within twenty (20) days after receipt of the complaint unless an earlier or later date is set by the commission for good cause shown. The commission shall establish a schedule for discovery and hearing, which schedule shall allow the commission to take and review evidence presented by the parties and submit a nonbinding recommendation to the House of Representatives in a timely fashion.

(4) An additional copy of all complaints filed pursuant to this subsection shall be served on the Speaker of the House of Representatives. The Speaker of the House of Representatives shall appoint one (1) member of the chamber from each political party to serve as ex officio, nonvoting members of the commission for the consideration of all matters relating to the complaint.

(5) In those actions concerning a seat in the House of Representatives, the recommendation is to be made to the Speaker of the House of Representatives. The Speaker of the House of Representatives shall present the nonbinding recommendation to the members of the House of Representatives, and the members shall take such actions as they deem appropriate.

(6) The commission is authorized to promulgate any rules necessary to carry out the provisions set forth herein regarding contests for the seats in the House of Representatives.

History. Acts 1969, No. 465, Art. 10, 1014, § 1; 2001, No. 452, § 1; 2019, No. § 8; A.S.A. 1947, § 3-1008; Acts 1991, No. 315, § 420.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in (b)(6).

SUBCHAPTER 9 — VOTING AND ELECTIONS TRANSPARENCY ACT OF 2017

SECTION.

7-5-906. Provisional and rejected ballot reporting.

7-5-906. Provisional and rejected ballot reporting.

(a) A county board of election commissioners shall prepare a report of provisional and rejected ballots cast in the county for each election.

(b) The report of provisional and rejected ballots cast for each election shall include:

(1) The total number of:

- (A) Provisional ballots;
- (B) Absentee provisional ballots;
- (C) In-person provisional ballots cast during early voting;
- (D) In-person provisional ballots cast on election day; and
- (E) Rejected ballots;

(2) The reason each ballot was rejected or provisional;

(3) The number of provisional ballots counted in the election results;

(4) The total number of provisional ballots not counted in the election, including:

(A) The total number of provisional ballots not counted by the reason it was not counted; and

(B) The total number of provisional ballots not counted by the method the provisional ballot was cast, including if the provisional ballot was:

- (i) An absentee ballot;
- (ii) Cast during early voting; or
- (iii) Cast on election day; and

(5) The total number of rejected ballots other than provisional ballots, including:

(A) The total number of rejected ballots by the reason they were rejected; and

(B) The total number of rejected ballots by the method the rejected ballot was cast, including if the rejected ballot was:

- (i) An absentee ballot;
- (ii) Cast during early voting; or
- (iii) Cast on election day.

(c) The report of provisional ballots and rejected ballots cast for each election shall be submitted by the county board of election commissioners to the State Board of Election Commissioners within thirty (30) days of every election.

(d) The county board of election commissioners may, by agreement with the county clerk, transmit the report of provisional and rejected

ballots to the county clerk who shall transmit the information to the State Board of Election Commissioners.

(e) Within sixty (60) days of each election, the State Board of Election Commissioners shall:

- (1) Compile information reported by the county boards of election commissioners under this section; and
- (2) Make the reports publicly available.

History. Acts 2021, No. 1022, § 1.

CHAPTER 6

CAMPAIGN PRACTICES

SUBCHAPTER.

2. CAMPAIGN FINANCING.

SUBCHAPTER 1 — GENERAL PROVISIONS

7-6-102. Political practices pledge — Penalty for falsification.

CASE NOTES

ANALYSIS

Inaccuracy in Pledge.
Surname.

Inaccuracy in Pledge.

Although, contrary to § 7-10-103, an appointed district court judge who had filed as a candidate for the Court of Appeals erroneously used the title “Judge” in her signature of the political practices pledge, section 7-10-103 did not restrict courts from ordering a change on the ballot and current law only sanctioned those who did not sign the pledge; there was no penalty for those found to have included inaccurate information on the pledge. *Barrett v. Thurston*, 2020 Ark. 36, 593 S.W.3d 1 (2020).

Surname.

Appointed district court judge who had filed as a candidate for the Court of Appeals was not disqualified because she used her maiden surname on the political practices pledge rather than her married surname. The record indicated that the candidate was known professionally by her maiden name, and her use of her maiden name on the ballot title did not serve to undermine the spirit of the political practices pledge by obfuscating her true identity, nor did it run afoul of this section, which requires only that a candidate use their “surname”. *Barrett v. Thurston*, 2020 Ark. 36, 593 S.W.3d 1 (2020).

SUBCHAPTER 2 — CAMPAIGN FINANCING

SECTION.

7-6-201. Definitions.

7-6-202. Penalties.

7-6-203. Contributions — Limitations —
Acceptance or solicitation
— Use as personal income
— Disposition. [Effective
until January 1, 2023.]

7-6-203. Contributions — Limitations —

SECTION.

Acceptance or solicitation
— Use as personal income
— Disposition. [Effective
January 1, 2023.]

7-6-207. Reports of contributions — Candidates for state or district office.

7-6-208. Reports of contributions — Can-

SECTION.

didates for school district, township, or municipal office.

7-6-209. Reports of contributions — Candidates for county office.

7-6-214. Publication of reports.

7-6-215. Registration and reporting by approved political action committees.

7-6-218. Citizen complaints — Definition.

7-6-220. Reporting of independent expenditures.

7-6-222. Tax credits for certain individual political contributions.

SECTION.

7-6-224. Authority of local jurisdictions.

7-6-226. Registration and reporting by county political party committees.

7-6-228. Campaign signs and materials.

7-6-230. Alternative to electronic filing of reports.

7-6-231. Alternative to electronic filing — Reporting of independent expenditures — Registration and reports for political action committees.

Effective Dates. Acts 2019, No. 547, § 2: Mar. 21, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that it is paramount to our democracy that the participants in the democracy be held accountable for ethics violations; that the Arkansas Ethics Commission has inadequate staffing and funding to complete pending investigations of complaints filed in 2018; and that this act is immediately necessary because the integrity of our governmental system is at risk without adequate completion of pending investigations. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2021, No. 385, § 2: effective for all elections after Jan. 1, 2023.

Acts 2021, No. 1029, § 3: Apr. 29, 2021. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the online campaign finance reporting forms and system of the Secretary of State result in inaccurate reports; that transparency in campaign finance reporting is an important function of preserving the public trust; that ensuring the accuracy and ease of campaign finance reporting will ensure candidates are fully complying with campaign finance laws; and that this act is immediately necessary because the current electronic reporting system is difficult to use and creates inconsistencies in the campaign finance reporting and damages the public trust. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

7-6-201. Definitions.

As used in this subchapter:

(1)(A) “Approved political action committee” means any person that:

(i) Receives contributions from one (1) or more persons in order to make contributions to candidates, ballot question committees, legis-

lative question committees, political parties, county political party committees, or other political action committees;

(ii) Does not accept any contribution or cumulative contributions in excess of five thousand dollars (\$5,000) from any person in any calendar year; and

(iii) Registers pursuant to § 7-6-215 prior to making contributions.

(B) "Approved political action committee" does not include an organized political party as defined in § 7-1-101, a county political party committee, the candidate's own campaign committee, an exploratory committee, or a ballot question committee or legislative question committee as defined in § 7-9-402;

(2) "Candidate" means any individual who has knowingly and willingly taken affirmative action, including solicitation of funds, for the purpose of seeking nomination for or election to any public office;

(3) [Repealed.]

(4)(A) "Contribution" means, whether direct or indirect, advances, deposits, or transfers of funds, contracts, or obligations, whether or not legally enforceable, payments, gifts, subscriptions, assessments, payment for services, dues, advancements, forbearance, loans, or pledges or promises of money or anything of value, whether or not legally enforceable, to a candidate, committee, or holder of elective office made for the purpose of influencing the nomination or election of any candidate.

(B)(i) "Contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events; the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; and any payments for the services of any person serving as an agent of a candidate or committee by a person other than the candidate or committee or persons whose expenditures the candidates or committee must report under this subchapter.

(ii) "Contribution" further includes any transfer of anything of value received by a committee from another committee.

(C) "Contribution" shall not include noncompensated, nonreimbursed, volunteer personal services or travel;

(5) "Contribution and expenditure" shall not include activity sponsored and funded by a political party that meets the definition of a political party under § 7-1-101 or a political party that meets the requirements of § 7-7-205 to promote its candidates or nominees through events such as dinners, luncheons, rallies, or similar gatherings and shall not include nonpartisan activity designed to encourage individuals to register to vote or to vote or any communication by any membership organization to its members or stockholders if the membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election or election of any candidate;

(6) "County political party committee" means a person that:

(A) Is organized at the county level for the purpose of supporting its affiliate party and making contributions;

(B) Is recognized by an organized political party, as defined in § 7-1-101, as being affiliated with that political party;

(C) Receives contributions from one (1) or more persons in order to make contributions to candidates, ballot question committees, legislative question committees, political parties, political action committees, or other county political party committees;

(D) Does not accept any contribution or cumulative contributions in excess of five thousand dollars (\$5,000) from any person in any calendar year; and

(E) Registers pursuant to § 7-6-226 prior to making contributions;

(7) "Election" means each election held to nominate or elect a candidate to any public office, including school elections. For the purposes of this subchapter, a preferential primary, a general primary, a special election, and a general election shall each constitute a separate election;

(8) "Expenditure" means a purchase, payment, distribution, gift, loan, or advance of money or anything of value, and a contract, promise, or agreement to make an expenditure, made for the purpose of influencing the nomination or election of any candidate;

(9)(A) "Exploratory committee" means a person that receives contributions which are held to be transferred to the campaign of a single candidate in an election.

(B) "Exploratory committee" shall not include:

(i) A political party;

(a) That meets the definition of a political party under § 7-1-101; or

(b) A political party that meets the requirements of § 7-7-205; or

(ii) The candidate's own campaign committee;

(10) "Financial institution" means any commercial bank, savings and loan, mutual savings bank or savings bank, insurance company brokerage house, or any corporation that is in the business of lending money and that is subject to state or federal regulation;

(11) "Independent expenditure" means an expenditure which is not a contribution and:

(A) Expressly advocates the election or defeat of a clearly identified candidate for office;

(B) Is made without arrangement, cooperation, or consultation between a candidate or an authorized committee or agent of the candidate and the person making the expenditure or an authorized agent of that person; and

(C) Is not made in concert with or at the request or suggestion of a candidate or an authorized committee or agent of the candidate;

(12) "Independent expenditure committee" means any person that receives contributions from one (1) or more persons in order to make an independent expenditure and is registered pursuant to § 7-6-227 prior to making expenditures;

(13)(A) "Legislative caucus committee" means a person that is composed exclusively of members of the General Assembly, that elects or appoints officers and recognizes identified legislators as members of the organization, and that exists for research and other support of policy development and interests that the membership hold in common.

(B) "Legislative caucus committee" includes, but is not limited to, a political party caucus of the General Assembly, the Senate, or the House of Representatives.

(C) An organization whose only nonlegislator member is the Lieutenant Governor or the Governor is a "legislative caucus committee" for the purposes of this subchapter;

(14)(A) "Person" means any individual, proprietorship, firm, partnership, joint venture, syndicate, labor union, business trust, company, corporation, association, committee, or any other organization or group of persons acting in concert.

(B) "Person" shall also include:

(i) A political party that meets the definition of a political party under § 7-1-101 or a political party that meets the requirements of § 7-7-205;

(ii) A county political party committee; and

(iii) A legislative caucus committee;

(15)(A) "Prohibited political action committee" means any person that receives contributions from one (1) or more persons in order to make contributions to candidates, ballot question committees, legislative question committees, political parties, county political party committees, or other political action committees but that does not meet the requirements of an approved political action committee.

(B) "Prohibited political action committee" shall not include:

(i) A political party that meets the definition of a political party under § 7-1-101 or a political party that meets the requirements of § 7-7-205;

(ii) The candidate's own campaign committee;

(iii) A county political party committee;

(iv) An exploratory committee; or

(v) A ballot or legislative question committee;

(16) "Public office" means any office created by or under authority of the laws of the State of Arkansas or of a subdivision thereof that is filled by the voters, except a federal office;

(17)(A) "Remaining campaign funds" means any balance of campaign funds over expenses incurred as of the day of the election except for:

(i) Any funds required to repay loans made by the candidate from his or her personal funds to the campaign; or

(ii) To repay loans made by financial institutions to the candidate and applied to the campaign.

(B) "Remaining campaign funds" does not include campaign signs, campaign literature, and other printed campaign materials that were:

- (i) Purchased by the campaign;
- (ii) Reported on the appropriate contribution and expenditure report for the campaign at the time of the purchase; and
- (iii) Retained for use in a future campaign by the same candidate; and

(18)(A) "Written instrument" means a check on which the contributor is directly liable or which is written on a personal account, trust account, partnership account, business account, or other account that contains the contributor's funds.

(B) As used in § 7-6-204 in the case of a contribution by credit card or debit card, "written instrument" includes without limitation:

(i) A paper record signed by the cardholder, provided that the paper record contains the following information for the cardholder at the time of making the contribution:

- (a) Valid name;
- (b) Complete address;
- (c) Place of business;
- (d) Employer; and
- (e) Occupation; or

(ii) In the case of a contribution made through the internet, an electronic record created and transmitted by the cardholder, provided that the electronic record contains the following information for the cardholder at the time of making the contribution:

- (a) Valid name;
- (b) Complete address;
- (c) Place of business;
- (d) Employer; and
- (e) Occupation.

History. Acts 1975, No. 788, § 1; 1977, No. 312, §§ 4, 7; A.S.A. 1947, § 3-1109; Acts 1987, No. 246, § 1; Init. Meas. 1990, No. 1, § 1; Acts 1993, No. 1209, § 2; Init. Meas. 1996, No. 1, § 1; Acts 1997, No. 491, § 1; 1999, No. 553, § 2; 2003, No. 195, § 1; 2005, No. 1284, § 2; 2005, No. 2006, § 1; 2009, No. 473, § 2; 2009, No. 1204, § 1; 2011, No. 721, § 2; 2013, No. 1126, §§ 9, 10; 2015, No. 1280, §§ 3, 4; 2021, No. 272, § 1; 2021, No. 737, §§ 1, 2.

A.C.R.C. Notes. Pursuant to § 1-2-207(b), the repeal of § 7-6-201(3) by Acts 2021, No. 737, § 1, superseded the amendment to § 7-6-201(3) by Acts 2021,

No. 272, § 1. The amendment by Acts 2021, No. 272 added (3)(C), which read: "If the office sought does not have an annual salary, 'carryover funds' means an amount of three thousand dollars (\$3,000) or less."

Amendments. The 2021 amendment by No. 272 added (3)(C).

The 2021 amendment by No. 737 repealed (3), defining "Carryover funds"; in (17)(A), substituted "Remaining campaign funds" for "Surplus campaign funds"; and deleted former (17)(A)(i), and redesignated the remaining subdivisions accordingly.

CASE NOTES

Candidate.

Political activist had standing to assert a First Amendment challenge to the prohibition in § 7-6-203 against soliciting or accepting campaign contributions more

than two years before an election; the activist alleged a desire to donate in a future election cycle, submitted an affidavit, and alleged a credible threat of prosecution. A likelihood of success supported

a preliminary injunction because no evidence showed restricting early contributions furthered the state's anti-corruption

interest more than contribution limits alone. *Jones v. Jegley*, 947 F.3d 1100 (8th Cir. 2020).

7-6-202. Penalties.

A person who knowingly fails to comply with this subchapter shall upon conviction be guilty of a Class A misdemeanor unless a different penalty applies under this subchapter.

History. Acts 1975, No. 788, § 10; A.S.A. 1947, § 3-1118; Acts 2005, No. 1994, § 224; 2013, No. 1126, § 11; 2019, No. 879, § 1.

Amendments. The 2019 amendment added "unless a different penalty applies under this subchapter".

CASE NOTES

Standing to Challenge.

Political activist had standing to assert a First Amendment challenge to the prohibition in § 7-6-203 against soliciting or accepting campaign contributions more than two years before an election; the activist alleged a desire to donate in a future election cycle, submitted an affida-

vit, and alleged a credible threat of prosecution. A likelihood of success supported a preliminary injunction because no evidence showed restricting early contributions furthered the state's anti-corruption interest more than contribution limits alone. *Jones v. Jegley*, 947 F.3d 1100 (8th Cir. 2020).

7-6-203. Contributions — Limitations — Acceptance or solicitation — Use as personal income — Disposition. [Effective until January 1, 2023.]

(a)(1)(A) It shall be unlawful for any candidate for any public office or for any person acting on the candidate's behalf to accept campaign contributions in excess of the maximum campaign contribution level established by rule of the Arkansas Ethics Commission under subsection (i) of this section per election from:

- (i) An individual;
- (ii) A political party that meets the definition of a political party under § 7-1-101;
- (iii) A political party that meets the requirements of § 7-7-205;
- (iv) A county political party committee;
- (v) A legislative caucus committee; or
- (vi) An approved political action committee.

(B) It shall be unlawful for a candidate for a public office or for any person acting on the candidate's behalf to accept a campaign contribution from a prospective contributor other than those under subdivisions (a)(1)(A)(i)-(vi) of this section.

(2) A candidate may accept a campaign contribution or contributions up to the maximum amount from any prospective contributor under subdivisions (a)(1)(A)(i)-(vi) of this section for each election, whether opposed or unopposed.

(b)(1) It shall be unlawful for any person to make a contribution to a candidate for any public office or to any person acting on the candidate's

behalf, which in the aggregate exceeds the maximum campaign contribution level established by rule of the Arkansas Ethics Commission per election.

(2) A person permitted to make a contribution or contributions under subdivisions (a)(1)(A)(i)-(vi) of this section may make a contribution or contributions up to the maximum amount to a candidate for each election, whether opposed or unopposed.

(c) The limitation shall not apply to loans made by a candidate from his or her own personal funds to the campaign, contributions made by a candidate from his or her personal funds to the campaign, or to personal loans made by financial institutions to the candidate and applied to his or her campaign.

(d)(1) It shall be unlawful for any candidate for any public office or any person acting in the candidate's behalf to accept any contribution from a prohibited political action committee for any election.

(2) It shall be unlawful for any prohibited political action committee to make a contribution to a candidate for public office in an election.

(3) It shall be unlawful for any ballot question committee, legislative question committee, political party, county political party committee, or approved political action committee to accept any contribution from a prohibited political action committee.

(4) It shall be unlawful for any prohibited political action committee to make a contribution to:

- (A) A ballot question committee;
- (B) A legislative question committee;
- (C) A political party;
- (D) A county political party committee;
- (E) An approved political action committee; or
- (F) A prohibited political action committee.

(e) [Repealed.]

(f)(1) A candidate shall not take any campaign funds as personal income.

(2) A candidate shall not take any campaign funds as income for his or her spouse or dependent children, except that:

(A) This subsection shall not prohibit a candidate who has an opponent from employing his or her spouse or dependent children as campaign workers;

(B) The use of campaign funds to pay a candidate's childcare expenses shall not be considered a taking of campaign funds as personal income if the campaign funds are used to pay for childcare for the time the candidate is engaging in campaign activity and the childcare expenses would not exist in the absence of the campaign; and

(C) Any candidate who has an opponent and who, during the campaign and before the election, takes a leave of absence without pay from his or her primary place of employment shall be authorized to take campaign funds during the campaign and before the election as personal income up to the amount of employment income lost as a result of the leave of absence.

(3) A candidate who takes campaign funds during the campaign and before the election under a leave of absence pursuant to the provisions of subdivision (f)(2) of this section may elect to treat the campaign funds as a loan from the campaign fund to the candidate to be paid back to the campaign fund by the candidate.

(4)(A)(i) For purposes of this subsection, a candidate or officeholder, who uses campaign funds to fulfill any commitment, obligation, or expense that would exist regardless of the candidate's campaign or officeholder activity, shall be deemed to have taken campaign funds as personal income.

(ii) Candidates or officeholders may use campaign funds to fulfill any commitment, obligation, or expense authorized by law, or permitted by an Arkansas Ethics Commission rule or opinion at the time of the expenditure, or reasonably and legitimately related to a campaign or officeholder activity.

(iii) If a candidate or officeholder is assessed a fine by the Arkansas Ethics Commission under § 7-6-218(b)(4)(B) for the use of campaign funds as personal income, a candidate or officeholder shall not use campaign funds or carryover funds to pay the fine.

(B) The use of campaign funds to purchase a cake or other perishable item of food at a fund-raising event held by a volunteer agency, as defined in § 16-6-103, shall not be considered a taking of campaign funds as personal income.

(C) The use of campaign funds to purchase advertising prior to the date the final report is due to be filed thanking voters for their support shall not be considered a taking of campaign funds as personal income.

(D) The use of campaign funds to pay a candidate's own personal expenses for food, lodging, or travel to attend a national presidential nominating convention shall not be considered a taking of campaign funds as personal income.

(5) If a candidate loses an election or if an officeholder is no longer in office, personal use of campaign funds remains prohibited by this section unless the expenses relate to a future candidacy and shall comply with subdivision (f)(4) of this section.

(6) Knowingly taking campaign funds as personal income is a:

(A) Class B felony if the value of the benefit is twenty-five thousand dollars (\$25,000) or more;

(B) Class C felony if the value of the benefit is five thousand dollars (\$5,000) or more but less than twenty-five thousand dollars (\$25,000);

(C) Class D felony if the value of the benefit is two thousand five hundred dollars (\$2,500) or more but less than five thousand dollars (\$5,000); or

(D) Class A misdemeanor if the value of the benefit is less than two thousand five hundred dollars (\$2,500).

(7) It is an affirmative defense to a prosecution for taking campaign funds as personal income if the candidate or officeholder shows by a preponderance of the evidence that the personal property was retained as campaign funds, and the candidate or officeholder:

- (A) Reported the personal property as campaign funds; and
- (B) Retained or disposed of the personal property in the manner that is required by law for campaign funds.
- (g)(1) A candidate may turn over campaign funds to either:
 - (A) The Treasurer of State for the benefit of the General Revenue Fund Account of the State Apportionment Fund;
 - (B) A political party as defined in § 7-1-101 or a political party caucus of the General Assembly, the Senate, or the House of Representatives;
 - (C) A nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;
 - (D) Cities of the first class, cities of the second class, or incorporated towns; or
 - (E) The contributors to the candidate's campaign.
- (2)(A) Remaining campaign funds may be maintained after an election and used to run for election or reelection.
 - (B) Nothing shall prohibit a person at any time from disposing of all or any portion of his or her campaign funds in the manner set out under subdivision (g)(1) of this section. However, the candidate shall not take the funds as personal income or as income for his or her spouse or dependent children.
 - (C)(i) Campaign funds may be retained by a person for not more than ten (10) years after the last election at which he or she was a candidate, or if applicable, not more than ten (10) years after the last day that the person held office, and any remaining campaign funds shall be disposed of in the manner set out under subdivision (g)(1) of this section.
 - (ii)(a) The officer with whom the person last filed a final campaign report shall provide the person timely notice of the requirements of this subdivision (g)(2)(C) prior to the expiration of the ten-year period.
 - (b) However, failure to provide the notice does not relieve the person of his or her obligation under this subsection.
 - (D)(i) The use of campaign funds to pay an elected candidate's own personal expenses for food, lodging, conference fees, or travel to attend a conference related to the performance of his or her responsibilities as an elected official shall not be considered a taking of campaign funds as personal income.
 - (ii) The reimbursement of expenses shall be a result of travel and the source of the reimbursement shall be authorized under the rules of the House of Representatives or the Senate and used to reimburse the campaign account.
 - (iii) The reimbursement amount shall be reported in the elected candidate's campaign fund report.
 - (E) If a candidate or officeholder uses campaign funds or carryover funds to pay a fine imposed by the Arkansas Ethics Commission under § 7-6-218(b)(4)(B) for the use of campaign funds as personal income, the candidate or officeholder shall be deemed to have taken campaign funds as personal income.

(3) After the date of an election at which the person is a candidate for nomination or election, the person shall not accept campaign contributions for that election except for the sole purpose of raising funds to retire campaign debt.

(4) Campaign funds or remaining campaign funds given to a political party caucus shall be segregated in an account separated from other caucus funds and shall not be used:

(A) By the political party caucus to make a campaign contribution;

or

(B) To provide any personal income to any candidate who donated campaign funds or remaining campaign funds.

(h) A candidate may maintain his or her campaign funds in one (1) or more campaign accounts. Campaign funds shall not be placed in an account containing personal or business funds.

(i) The Arkansas Ethics Commission shall establish the maximum campaign contribution limit by rule as follows:

(1) The adjusted campaign contribution limit shall be calculated from a base amount of two thousand dollars (\$2,000) as of January 1, 2015;

(2) The contribution limits shall be adjusted at the beginning of each odd-numbered year in an amount equal to the percentage certified to the Federal Election Commission by the United States Bureau of Labor Statistics under 52 U.S.C. § 30116(c) as existing on January 1, 2015;

(3) If the amount after adjustment under subdivision (i)(2) of this section is not a multiple of one hundred dollars (\$100), the Arkansas Ethics Commission shall round the amount to the nearest multiple of one hundred dollars (\$100); and

(4) The Arkansas Ethics Commission shall promulgate rules identifying the adjusted contribution limit under this subsection.

History. Acts 1975, No. 788, § 2; 1977, No. 312, § 6; 1981, No. 690, § 1; A.S.A. 1947, § 3-1110; Init. Meas. 1990, No. 1, §§ 2, 3; Acts 1993, No. 1195, § 1; 1993, No. 1196, § 1; 1995, No. 863, §§ 1-3; 1995, No. 1296, § 41; Init. Meas. 1996, No. 1, §§ 2, 3; Acts 1997, No. 116, § 1; 1997, No. 491, §§ 2, 3; 1999, No. 553, § 3; 1999, No. 1057, § 1; 2001, No. 954, § 1; 2001, No. 1839, § 2; 2003, No. 195, §§ 2, 3; 2003, No. 248, § 1; 2005, No. 1284, §§ 3, 4; 2005, No. 1413, § 1; 2005, No. 1695, § 1; 2007, No. 221, § 2; 2009, No. 340, § 1; 2009, No. 473, §§ 3, 4; 2009, No. 1204, § 2; 2011, No. 721, §§ 3, 4; 2013, No. 382, § 1; 2013, No. 1110, § 7; 2015, No. 142, § 1; 2015, No. 1280, §§ 5-7; 2017, No. 318, § 1; 2019, No. 240, § 1; 2019, No. 845, § 1; 2019, No. 879, § 2; 2021, No. 254, §§ 1, 2; 2021, No. 324, §§ 1, 2; 2021, No. 384, §§ 1-3; 2021, No. 734, § 1; 2021, No. 737, §§ 3-6.

A.C.R.C. Notes. Pursuant to § 1-2-207(b), in new subdivisions in (f) and (g) added by Act 324, references to “carryover funds” were repealed by Act 737 with the remainder of the new subdivisions being codified.

Publisher’s Notes. For text of section effective January 1, 2023, see the following version.

Amendments. The 2019 amendment by No. 240 deleted “permitted to make a contribution under subdivisions (a)(1)(A)(i)-(vi) of this section” following “unlawful for any person” in (b)(1).

The 2019 amendment by No. 845 added (g)(4)(E).

The 2019 amendment by No. 879 deleted the second sentence in (f)(1) and deleted (f)(1)(A) and (f)(1)(B); redesignated (f)(4)(A) as (f)(4)(A)(i); in (f)(4)(A)(i), inserted “or officeholder”, “or carryover

funds”, and “or officeholder activity”; and added (f)(4)(A)(ii), and (f)(5) through (f)(7).

The 2021 amendment by No. 254 added (d)(4)(F); and repealed (e).

The 2021 amendment by No. 324 added (f)(4)(A)(iii) and (g)(4)(F) [now (g)(2)(E)].

The 2021 amendment by No. 384 substituted “the maximum campaign contribution level established by rule of the Arkansas Ethics Commission under subsection (i) of this section” for “two thousand seven hundred dollars (\$2,700)” in the introductory paragraph of (a)(1)(A); substituted “the maximum campaign contribution level established by rule of the Arkansas Ethics Commission” for “two thousand seven hundred dollars (\$2,700)” in (b)(1); added the introductory language of (i) and (i)(1) and redesignated former (i)(1)-(3) as (i)(2)-(4); deleted “under sub-

division (a)(1)(A) and subdivision (b)(1) of this section” in (i)(2); substituted “subdivision (i)(2)” for “subdivision (i)(1)” in (i)(3); and substituted “this subsection” for “subdivision (i)(1) of this section” in (i)(4).

The 2021 amendment by No. 734 inserted (f)(2)(B); redesignated former (f)(2)(B) as (f)(2)(C); and made a stylistic change.

The 2021 amendment by No. 737 deleted “or carryover funds” preceding “to fulfill” in (f)(4)(A)(i) and (ii); rewrote (f)(5), (f)(7), and the introductory language of (g)(1); deleted former (g)(2) and (g)(3), and redesignated former (g)(4)-(6) as (g)(2)-(4); rewrote (g)(2); and substituted “Campaign funds or remaining campaign funds” for “Surplus campaign funds or carryover funds” in the introductory language of (g)(4) and in (g)(4)(B).

CASE NOTES

Constitutionality.

Political activist had standing to assert a First Amendment challenge to the prohibition in this section against soliciting or accepting campaign contributions more than two years before an election; the activist alleged a desire to donate in a future election cycle, submitted an affida-

vit, and alleged a credible threat of prosecution. A likelihood of success supported a preliminary injunction because no evidence showed restricting early contributions furthered the state’s anti-corruption interest more than contribution limits alone. *Jones v. Jegley*, 947 F.3d 1100 (8th Cir. 2020).

7-6-203. Contributions — Limitations — Acceptance or solicitation — Use as personal income — Disposition. [Effective January 1, 2023.]

(a)(1)(A) It shall be unlawful for any candidate for any public office or for any person acting on the candidate’s behalf to accept campaign contributions in excess of the maximum campaign contribution level established by rule of the Arkansas Ethics Commission under subsection (i) of this section per election from:

- (i) An individual;
- (ii) A political party that meets the definition of a political party under § 7-1-101;
- (iii) A political party that meets the requirements of § 7-7-205;
- (iv) A county political party committee;
- (v) A legislative caucus committee; or
- (vi) An approved political action committee.

(B) It shall be unlawful for a candidate for a public office or for any person acting on the candidate’s behalf to accept a campaign contribution from a prospective contributor other than those under subdivisions (a)(1)(A)(i)-(vi) of this section.

(2) A candidate may accept a campaign contribution or contributions up to the maximum amount from any prospective contributor under

subdivisions (a)(1)(A)(i)-(vi) of this section for each election, whether opposed or unopposed.

(b)(1)(A) It shall be unlawful for any person to make a contribution to a candidate for any public office or to any person acting on the candidate's behalf, which in the total aggregate amount exceeds two thousand seven hundred dollars (\$2,700) per election.

(B) The total aggregate amount per election is based on the total contributions made to a candidate by a donor during an election regardless of which office or offices the candidate is seeking, and the aggregate amount during an election applies even if a candidate:

(i) Seeks more than one (1) office during the election; or

(ii) Concludes a campaign or otherwise withdraws from the election.

(2) A person permitted to make a contribution or contributions under subdivisions (a)(1)(A)(i)-(vi) of this section may make a contribution or contributions up to the maximum amount to a candidate for each election, whether opposed or unopposed.

(c) The limitation shall not apply to loans made by a candidate from his or her own personal funds to the campaign, contributions made by a candidate from his or her personal funds to the campaign, or to personal loans made by financial institutions to the candidate and applied to his or her campaign.

(d)(1) It shall be unlawful for any candidate for any public office or any person acting in the candidate's behalf to accept any contribution from a prohibited political action committee for any election.

(2) It shall be unlawful for any prohibited political action committee to make a contribution to a candidate for public office in an election.

(3) It shall be unlawful for any ballot question committee, legislative question committee, political party, county political party committee, or approved political action committee to accept any contribution from a prohibited political action committee.

(4) It shall be unlawful for any prohibited political action committee to make a contribution to:

(A) A ballot question committee;

(B) A legislative question committee;

(C) A political party;

(D) A county political party committee;

(E) An approved political action committee; or

(F) A prohibited political action committee.

(e) [Repealed.]

(f)(1) A candidate shall not take any campaign funds as personal income.

(2) A candidate shall not take any campaign funds as income for his or her spouse or dependent children, except that:

(A) This subsection shall not prohibit a candidate who has an opponent from employing his or her spouse or dependent children as campaign workers;

(B) The use of campaign funds to pay a candidate's childcare expenses shall not be considered a taking of campaign funds as

personal income if the campaign funds are used to pay for childcare for the time the candidate is engaging in campaign activity and the childcare expenses would not exist in the absence of the campaign; and

(C) Any candidate who has an opponent and who, during the campaign and before the election, takes a leave of absence without pay from his or her primary place of employment shall be authorized to take campaign funds during the campaign and before the election as personal income up to the amount of employment income lost as a result of the leave of absence.

(3) A candidate who takes campaign funds during the campaign and before the election under a leave of absence pursuant to the provisions of subdivision (f)(2) of this section may elect to treat the campaign funds as a loan from the campaign fund to the candidate to be paid back to the campaign fund by the candidate.

(4)(A)(i) For purposes of this subsection, a candidate or officeholder, who uses campaign funds to fulfill any commitment, obligation, or expense that would exist regardless of the candidate's campaign or officeholder activity, shall be deemed to have taken campaign funds as personal income.

(ii) Candidates or officeholders may use campaign funds to fulfill any commitment, obligation, or expense authorized by law, or permitted by an Arkansas Ethics Commission rule or opinion at the time of the expenditure, or reasonably and legitimately related to a campaign or officeholder activity.

(iii) If a candidate or officeholder is assessed a fine by the Arkansas Ethics Commission under § 7-6-218(b)(4)(B) for the use of campaign funds as personal income, a candidate or officeholder shall not use campaign funds or carryover funds to pay the fine.

(B) The use of campaign funds to purchase a cake or other perishable item of food at a fund-raising event held by a volunteer agency, as defined in § 16-6-103, shall not be considered a taking of campaign funds as personal income.

(C) The use of campaign funds to purchase advertising prior to the date the final report is due to be filed thanking voters for their support shall not be considered a taking of campaign funds as personal income.

(D) The use of campaign funds to pay a candidate's own personal expenses for food, lodging, or travel to attend a national presidential nominating convention shall not be considered a taking of campaign funds as personal income.

(5) If a candidate loses an election or if an officeholder is no longer in office, personal use of campaign funds remains prohibited by this section unless the expenses relate to a future candidacy and shall comply with subdivision (f)(4) of this section.

(6) Knowingly taking campaign funds as personal income is a:

(A) Class B felony if the value of the benefit is twenty-five thousand dollars (\$25,000) or more;

(B) Class C felony if the value of the benefit is five thousand dollars (\$5,000) or more but less than twenty-five thousand dollars (\$25,000);

(C) Class D felony if the value of the benefit is two thousand five hundred dollars (\$2,500) or more but less than five thousand dollars (\$5,000); or

(D) Class A misdemeanor if the value of the benefit is less than two thousand five hundred dollars (\$2,500).

(7) It is an affirmative defense to a prosecution for taking campaign funds as personal income if the candidate or officeholder shows by a preponderance of the evidence that the personal property was retained as campaign funds, and the candidate or officeholder:

(A) Reported the personal property as campaign funds; and

(B) Retained or disposed of the personal property in the manner that is required by law for campaign funds.

(g)(1) A candidate may turn over campaign funds to either:

(A) The Treasurer of State for the benefit of the General Revenue Fund Account of the State Apportionment Fund;

(B) A political party as defined in § 7-1-101 or a political party caucus of the General Assembly, the Senate, or the House of Representatives;

(C) A nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;

(D) Cities of the first class, cities of the second class, or incorporated towns; or

(E) The contributors to the candidate's campaign.

(2)(A) Remaining campaign funds may be maintained after an election and used to run for election or reelection.

(B) Nothing shall prohibit a person at any time from disposing of all or any portion of his or her campaign funds in the manner set out under subdivision (g)(1) of this section. However, the candidate shall not take the funds as personal income or as income for his or her spouse or dependent children.

(C)(i) Campaign funds may be retained by a person for not more than ten (10) years after the last election at which he or she was a candidate, or if applicable, not more than ten (10) years after the last day that the person held office, and any remaining campaign funds shall be disposed of in the manner set out under subdivision (g)(1) of this section.

(ii)(a) The officer with whom the person last filed a final campaign report shall provide the person timely notice of the requirements of this subdivision (g)(2)(C) prior to the expiration of the ten-year period.

(b) However, failure to provide the notice does not relieve the person of his or her obligation under this subsection.

(D)(i) The use of campaign funds to pay an elected candidate's own personal expenses for food, lodging, conference fees, or travel to attend a conference related to the performance of his or her responsibilities as an elected official shall not be considered a taking of campaign funds as personal income.

(ii) The reimbursement of expenses shall be a result of travel and the source of the reimbursement shall be authorized under the rules of the House of Representatives or the Senate and used to reimburse the campaign account.

(iii) The reimbursement amount shall be reported in the elected candidate's campaign fund report.

(E) If a candidate or officeholder uses campaign funds or carryover funds to pay a fine imposed by the Arkansas Ethics Commission under § 7-6-218(b)(4)(B) for the use of campaign funds as personal income, the candidate or officeholder shall be deemed to have taken campaign funds as personal income.

(3) After the date of an election at which the person is a candidate for nomination or election, the person shall not accept campaign contributions for that election except for the sole purpose of raising funds to retire campaign debt.

(4) Campaign funds or remaining campaign funds given to a political party caucus shall be segregated in an account separated from other caucus funds and shall not be used:

(A) By the political party caucus to make a campaign contribution; or

(B) To provide any personal income to any candidate who donated campaign funds or remaining campaign funds.

(h) A candidate may maintain his or her campaign funds in one (1) or more campaign accounts. Campaign funds shall not be placed in an account containing personal or business funds.

(i) The Arkansas Ethics Commission shall establish the maximum campaign contribution limit by rule as follows:

(1) The adjusted campaign contribution limit shall be calculated from a base amount of two thousand dollars (\$2,000) as of January 1, 2015;

(2) The contribution limits shall be adjusted at the beginning of each odd-numbered year in an amount equal to the percentage certified to the Federal Election Commission by the United States Bureau of Labor Statistics under 52 U.S.C. § 30116(c) as existing on January 1, 2015;

(3) If the amount after adjustment under subdivision (i)(2) of this section is not a multiple of one hundred dollars (\$100), the Arkansas Ethics Commission shall round the amount to the nearest multiple of one hundred dollars (\$100); and

(4) The Arkansas Ethics Commission shall promulgate rules identifying the adjusted contribution limit under this subsection.

History. Acts 1975, No. 788, § 2; 1977, No. 312, § 6; 1981, No. 690, § 1; A.S.A. 1947, § 3-1110; Init. Meas. 1990, No. 1, §§ 2, 3; Acts 1993, No. 1195, § 1; 1993, No. 1196, § 1; 1995, No. 863, §§ 1-3; 1995, No. 1296, § 41; Init. Meas. 1996, No. 1, §§ 2, 3; Acts 1997, No. 116, § 1; 1997, No. 491, §§ 2, 3; 1999, No. 553, § 3; 1999, No. 1057, § 1; 2001, No. 954, § 1; 2001, No. 1839, § 2; 2003, No. 195, §§ 2, 3; 2003, No. 248, § 1; 2005, No. 1284, §§ 3, 4; 2005, No. 1413, § 1; 2005, No. 1695, § 1; 2007, No. 221, § 2; 2009, No. 340, § 1; 2009, No. 473, §§ 3, 4; 2009, No. 1204, § 2; 2011, No. 721, §§ 3, 4; 2013, No. 382, § 1; 2013, No. 1110, § 7; 2015, No. 142, § 1; 2015, No. 1280, §§ 5-7; 2017, No. 318, § 1; 2019, No. 240, § 1; 2019, No.

845, § 1; 2019, No. 879, § 2; 2021, No. 254, §§ 1, 2; 2021, No. 324, §§ 1, 2; 2021, No. 384, §§ 1-3; 2021, No. 385, § 1; 2021, No. 734, § 1; 2021, No. 737, §§ 3-6.

A.C.R.C. Notes. Pursuant to § 1-2-207(b), in new subdivisions in (f) and (g) added by Act 324, references to “carryover funds” were repealed by Act 737 with the remainder of the new subdivisions being codified.

Publisher’s Notes. For text of section effective until January 1, 2023, see the preceding version.

Amendments. The 2019 amendment by No. 240 deleted “permitted to make a contribution under subdivisions (a)(1)(A)(i)-(vi) of this section” following “unlawful for any person” in (b)(1).

The 2019 amendment by No. 845 added (g)(4)(E).

The 2019 amendment by No. 879 deleted the second sentence in (f)(1) and deleted (f)(1)(A) and (f)(1)(B); redesignated (f)(4)(A) as (f)(4)(A)(i); in (f)(4)(A)(i), inserted “or officeholder”, “or carryover funds”, and “or officeholder activity”; and added (f)(4)(A)(ii), and (f)(5) through (f)(7).

The 2021 amendment by No. 254 added (d)(4)(F); and repealed (e).

The 2021 amendment by No. 324 added (f)(4)(A)(iii) and (g)(4)(F) [now (g)(2)(E)].

The 2021 amendment by No. 384 substituted “the maximum campaign contribution level established by rule of the Arkansas Ethics Commission under subsection (i) of this section” for “two thou-

sand seven hundred dollars (\$2,700)” in the introductory paragraph of (a)(1)(A); substituted “the maximum campaign contribution level established by rule of the Arkansas Ethics Commission” for “two thousand seven hundred dollars (\$2,700)” in (b)(1); added the introductory language of (i) and (i)(1) and redesignated former (i)(1)-(3) as (i)(2)-(4); deleted “under subdivision (a)(1)(A) and subdivision (b)(1) of this section” in (i)(2); substituted “subdivision (i)(2)” for “subdivision (i)(1)” in (i)(3); and substituted “this subsection” for “subdivision (i)(1) of this section” in (i)(4).

The 2021 amendment by No. 385 added (b)(1)(B) and redesignated former (b)(1) as (b)(1)(A); and substituted “total aggregate amount” for “aggregate” in (b)(1)(A).

The 2021 amendment by No. 734 inserted (f)(2)(B); redesignated former (f)(2)(B) as (f)(2)(C); and made a stylistic change.

The 2021 amendment by No. 737 deleted “or carryover funds” preceding “to fulfill” in (f)(4)(A)(i) and (ii); rewrote (f)(5), (f)(7), and the introductory language of (g)(1); deleted former (g)(2) and (g)(3), and redesignated former (g)(4)-(6) as (g)(2)-(4); rewrote (g)(2); and substituted “Campaign funds or remaining campaign funds” for “Surplus campaign funds or carryover funds” in the introductory language of (g)(4) and in (g)(4)(B).

Effective Dates. Acts 2021, No. 385, § 2: effective for all elections after Jan. 1, 2023.

CASE NOTES

Constitutionality.

Political activist had standing to assert a First Amendment challenge to the prohibition in this section against soliciting or accepting campaign contributions more than two years before an election; the activist alleged a desire to donate in a future election cycle, submitted an affida-

vit, and alleged a credible threat of prosecution. A likelihood of success supported a preliminary injunction because no evidence showed restricting early contributions furthered the state’s anti-corruption interest more than contribution limits alone. *Jones v. Jegley*, 947 F.3d 1100 (8th Cir. 2020).

7-6-207. Reports of contributions — Candidates for state or district office.

(a) REPORTS REQUIRED.

(1) Except as provided in subsections (c) and (e) of this section, each candidate for state or district office, including a district judge, or a person acting in the candidate’s behalf, shall file with the Secretary of State:

(A) For each quarter during a calendar year in which a candidate is not listed on any ballot for election, a quarterly report of all contributions received and expenditures made during that quarter. The quarterly report shall be filed no later than fifteen (15) days after the end of each quarter;

(B) Beginning with the month of January of a calendar year in which a candidate may be listed on any ballot for election, a monthly report of all contributions received and expenditures made during that month. However, for any month in which certain days of that month are included in a preelection report required under subdivision (a)(1)(C) of this section or a final report required under subdivision (a)(1)(D) of this section, no monthly report for that month shall be due. In the case of a primary or runoff election, those days of the month occurring after the date of the election shall be carried forward and included in the next monthly report. The monthly report shall be filed no later than fifteen (15) days after the end of each month, except that the final report, covering the month during which an election is held, shall be filed within thirty (30) days after the end of the month in which the last election is held at which the candidate seeks nomination and after the end of the month in which the general election is held. With respect to a special election, the candidate shall file monthly reports under this section beginning with the month in which the special election candidate's total campaign contributions or expenditures exceed five hundred dollars (\$500);

(C) No later than seven (7) days prior to any preferential primary election, runoff election, general election, or special election in which the candidate's name appears on the ballot, a preelection report of all contributions received and expenditures made between the period covered by the previous report and the period ten (10) days before the election. In case of a runoff election, the report shall cover all contributions received and expenditures made during that period of time that begins after the date of the election from which the runoff arose and ends ten (10) days before the runoff election;

(D) No later than thirty (30) days after the end of the month in which the candidate's name has appeared on the ballot in any primary election, runoff election, general election, or special election, or when only one (1) candidate qualifies for a particular office or position and no position or name of an unopposed candidate shall appear on a ballot, a final report of all contributions received and expenditures made which have not been disclosed on reports previously required to be filed. A final report is required regardless of whether a candidate has received contributions or made expenditures in excess of five hundred dollars (\$500);

(E)(i) No later than thirty (30) days after the end of the month in which the candidate has withdrawn, a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed.

(ii) If a candidate withdraws from the campaign, the candidate shall notify the Secretary of State in writing of the withdrawal; and

(F) If a candidate keeps remaining campaign funds after an election, the candidate shall continue filing the reports required by this subsection.

(2) Upon receiving the first report from any candidate, or upon receipt of the candidate's notice of filing for office, the Secretary of State shall provide the candidate with information on the deadlines for filing remaining quarterly, monthly, and preelection reports and shall furnish each candidate with the appropriate instructions for complying with the deadlines.

(3) A report is timely filed if it is filed in electronic form through the official website of the Secretary of State on or before the date that the report is due.

(b) CONTENTS OF REPORTS.

(1) The contribution and expenditure reports required by subsection (a) of this section shall indicate:

(A) The total amount of contributions received with loans stated separately, the total amount of expenditures made during the filing periods, and the cumulative amount of those totals for the entire election cycle;

(B) The name and address of each person, including the candidate, who made a contribution or contributions that in the aggregate exceeded fifty dollars (\$50.00);

(C) The contributor's principal place of business, employer, occupation, the amount contributed, the date the contribution was accepted by the candidate, and the aggregate contributed for each election;

(D) The name and address of each person, including the candidate, who contributed a nonmoney item, together with a description of the item, the date of receipt, and the value, not including volunteer service by individuals;

(E) An itemization of all single expenditures made that exceed one hundred dollars (\$100), including the:

(i) Amount of the expenditure;

(ii) Name and address of any person, including the candidate, to whom the expenditure was made; and

(iii) Date the expenditure was made;

(F) A list of all paid campaign workers and the amount the workers were paid;

(G) A list of all expenditures by categories, including, but not limited to:

(i) Television, radio, print, or other advertising;

(ii) Direct mail;

(iii) Office supplies;

(iv) Rent;

(v) Travel;

(vi) Expenses;

(vii) Entertainment; and

(viii) Telephone;

(H) The total amount of all nonitemized expenditures made during the filing period;

(I) A list of all disbursements made under § 7-6-203(g)(1); and

(J) The current balance of campaign funds.

(2)(A) If a candidate's campaign has ended and the candidate does not retain remaining campaign funds, the final report shall also indicate which option under § 7-6-203(g) was used to dispose of campaign funds.

(B) If a candidate's campaign has ended and the candidate is retaining remaining campaign funds, the final report shall also indicate the amount of funds retained by the candidate in accordance with § 7-6-201(3) [repealed].

(C) If the candidate's campaign has not ended, disposal of campaign funds shall not be required and the candidate may carry forward any remaining campaign funds to the general primary election, general election, or general runoff election for that same office.

(c) REPORTS NOT REQUIRED.

(1) The candidate or any person acting in the candidate's behalf shall comply with the filings required by this section beginning with the first reporting period, either quarterly, monthly, or preelection, in which his or her total contributions or expenditures exceed five hundred dollars (\$500). A candidate who has not received contributions or made expenditures in excess of five hundred dollars (\$500) shall not be required to file any reports required under this section other than the final report required under subdivision (a)(1)(D) of this section. In calculating the amount of contributions received or expenditures made for purposes of this exception, the payment of the filing fee from the candidate's personal funds shall not be considered as either a contribution or an expenditure.

(2) The preelection reports referenced in subdivision (a)(1)(C) of this section are only required for candidates with opponents in those elections.

(3) An unopposed candidate for an office described in subdivision (a)(1) of this section or any person acting in the unopposed candidate's behalf shall not be required to file the ten-day preelection report required by subdivision (a)(1)(C) of this section.

(d) FILINGS AND PUBLIC INSPECTION.

(1)(A)(i) The Secretary of State shall establish a filing system for reports filed under this section.

(ii) The reports shall be kept for eight (8) years from the date of filing, catalogued by candidate in chronological order, and made available for public inspection.

(iii) For eight (8) years after the reports are filed under this section, the Secretary of State is the official custodian of those records.

(B)(i) After the eight-year period, the Secretary of State shall turn the reports over to the Arkansas State Archives for maintenance and continued public inspection.

(ii) After the eight-year period, the Arkansas State Archives is the official custodian of the records of the reports filed under this section.

(C)(i) The campaign contribution and expenditure reports filed with the Secretary of State under this section shall be filed in electronic form through the official website of the Secretary of State.

(ii) The Arkansas Ethics Commission shall approve the format used by the Secretary of State for the filing of campaign contribution and expenditure reports in electronic form under subdivision (d)(1)(C)(i) of this section to ensure that all required information is requested.

(iii) The official website of the Secretary of State shall allow for searches of campaign contribution and expenditure report information filed in electronic form under subdivision (d)(1)(C)(i) of this section.

(2) The Secretary of State shall furnish to the commission, no later than thirty (30) days after each filing deadline under this section, a report listing the names of all candidates who have filed for office, the type of report filed by each candidate, and the date the report was received by the Secretary of State.

(e) **REPORTS BY CANDIDATES WHO HAVE FILED FOR ELECTIVE OFFICE.** If a candidate files for office during the party filing period, for the quarter including the party filing period, the candidate shall:

(1) File monthly reports under subdivision (a)(1)(B) of this section for the months of the quarter that includes the party filing period; and

(2) Not file a quarterly report under subdivision (a)(1)(A) of this section for the quarter that includes the party filing period.

(f)(1) For each financial institution the candidate and committee working on the candidate's behalf use for the purposes of receiving contributions or making expenditures within this state, the following information shall be submitted to the Secretary of State with the initial report filed under this section:

(A) The full name of the financial institution; and

(B) For the financial institution, the:

(i) Street address;

(ii) City;

(iii) State; and

(iv) United States postal zip code of the financial institution.

(2) The information disclosed under subdivision (f)(1) of this section:

(A) Shall be made available to the commission upon request;

(B) Is not a public record; and

(C) Is exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 1975, No. 788, § 3; 1977, No. 312, § 1; 1985, No. 896, §§ 1-3; A.S.A. § 1; 1999, No. 553, § 6; 2001, No. 564, § 1; 2001, No. 1839, §§ 3, 4; 2007, No. 221, § 5; 2009, No. 1204, § 3; 2011, No. 721, § 6; 2013, No. 382, §§ 2, 3; 2015, No. 999, § 1; 2015 (1st Ex. Sess.), No. 1, §§ 1, 2; 2016 (3rd Ex. Sess.), No. 2, § 95; 2016

(3rd Ex. Sess.), No. 3, § 95; 2017, No. 318, §§ 2, 3; 2017, No. 721, § 5; 2019, No. 240, §§ 2, 3; 2021, No. 254, § 3; 2021, No. 737, §§ 7-9.

Amendments. The 2019 amendment substituted “January of a calendar year” for “November preceding a calendar year” near the beginning of (a)(1)(B); and inserted “or when only one (1) candidate qualifies for a particular office or position

and no position or name of an unopposed candidate shall appear on a ballot” in (a)(1)(D).

The 2021 amendment by No. 254 added (f).

The 2021 amendment by No. 737 added (a)(1)(F); inserted (b)(1)(I), and redesignated former (b)(1)(I) as (b)(1)(J); rewrote former (b)(2)(A) as (b)(2)(A) and (B); and redesignated former (b)(2)(B) as (b)(2)(C).

7-6-208. Reports of contributions — Candidates for school district, township, or municipal office.

(a) **REPORTS REQUIRED.** Except as provided in subsection (d) of this section, each candidate for school district, township, or municipal office, or a person acting in the candidate’s behalf, shall:

(1)(A) For each year in which a candidate is not listed on a ballot for election, file an annual report of all contributions received and expenditures made during that year.

(B) The annual report shall be filed no later than fifteen (15) days after the end of the year;

(2) No later than seven (7) days prior to any preferential primary election, runoff election, general election, school election, or special election in which the candidate’s name appears on the ballot, file a preelection report of all contributions received and expenditures made between the period covered by the previous report, if any, and the period ten (10) days before the election. In case of a runoff election, the report shall cover all contributions received and expenditures made during that period of time that begins after the date of the election from which the runoff arose and ends ten (10) days before the runoff election;

(3) No later than thirty (30) days after the end of the month in which the candidate’s name has appeared on the ballot in any preferential primary election, runoff election, general election, school election, or special election, or when only one (1) candidate qualifies for a particular office or position and no position or name of an unopposed candidate shall appear on a ballot, file a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed. A final report is required regardless of whether a candidate has received contributions or made expenditures in excess of five hundred dollars (\$500);

(4) File supplemental reports of all contributions received and expenditures made after the date of preparation of the final report. The supplemental reports shall be filed within thirty (30) days after the receipt of a contribution or the making of an expenditure;

(5)(A) No later than thirty (30) days after the end of the month in which the candidate has withdrawn, file a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed.

(B) If a candidate withdraws from the campaign, the candidate shall notify the county clerk in writing of the withdrawal; and

(6) If a candidate keeps remaining campaign funds after an election, the candidate shall continue filing the reports required by this subsection.

(b) CONTENTS OF REPORTS.

(1) The contribution and expenditure reports required by subsection (a) of this section shall indicate:

(A) The total amount of contributions received with loans stated separately, the total amount of expenditures made during the filing periods, and the cumulative amount of those totals for the entire election cycle;

(B) The name and address of each person, including the candidate, who made a contribution or contributions that in the aggregate exceeded fifty dollars (\$50.00);

(C) The contributor's principal place of business, employer, occupation, the amount contributed, the date the contribution was accepted by the candidate, and the aggregate contributed for each election;

(D) The name and address of each person, including the candidate, who contributed a nonmoney item, together with a description of the item, the date of receipt, and the value, not including volunteer service by individuals;

(E) An itemization of all single expenditures made that exceeded one hundred dollars (\$100), including the amount of the expenditure, the name and address of any person, including the candidate, to whom the expenditure was made, and the date the expenditure was made;

(F) A list of all paid campaign workers and the amount the workers were paid;

(G) A list of all expenditures by categories, including, but not limited to:

(i) Television, radio, print, or other advertising;

(ii) Direct mail;

(iii) Office supplies;

(iv) Rent;

(v) Travel;

(vi) Expenses;

(vii) Entertainment; and

(viii) Telephone;

(H) The total amount of all nonitemized expenditures made during the filing period; and

(I) The current balance of campaign funds.

(2)(A) When the candidate's campaign has ended, the final report shall also indicate which option under § 7-6-203(g) was used to dispose of any surplus of campaign funds, the amount of funds disposed of by the candidate, and the amount of funds retained by the candidate in accordance with § 7-6-201(3) [repealed].

(B) If the candidate's campaign has not ended, disposal of campaign funds is not required and the candidate may carry forward any

remaining campaign funds to the general primary election, general election, or general runoff election for that same office.

(3)(A) Not later than fourteen (14) days after the deadline for filing for office, the county clerk shall notify each candidate in person or by mail of the deadlines for filing the ten-day preelection and final reports required by subsection (a) of this section and, at that time, furnish each candidate with the appropriate forms and instructions for complying with the deadlines.

(B) If notice is sent by mail, then the notice shall be postmarked within fourteen (14) days after the deadline for filing for office.

(c) **FILING OF REPORTS.** The reports required by this section shall be filed with the county clerk in the county in which the election is held. Reports shall be filed on the appropriate forms furnished by the Secretary of State.

(d) **REPORTS NOT REQUIRED.**

(1) A candidate who has not received contributions or made expenditures in excess of five hundred dollars (\$500) shall not be required to file any preelection reports required under subdivision (a)(1) of this section. In calculating the amount of contributions received or expenditures made for purposes of this exception, the payment of the filing fee from the candidate's personal funds shall not be considered as either a contribution or an expenditure.

(2) The preelection reports referenced in subdivision (a)(1) of this section are required only for candidates with opponents in those elections.

History. Acts 1975, No. 788, § 3; 1977, No. 312, § 1; A.S.A. 1947, § 3-1111; Acts 1987, No. 246, § 2; 1993, No. 1243, § 2; Init. Meas. 1996, No. 1, § 5; Acts 1999, No. 553, §§ 7-9; 2001, No. 1839, § 5; 2003, No. 195, § 4; 2007, No. 221, § 6; 2009, No. 1204, § 4; 2011, No. 721, § 7; 2013, No. 382, § 4; 2019, No. 240, § 4; 2021, No. 737, § 10.

Amendments. The 2019 amendment inserted "or when only one (1) candidate qualifies for a particular office or position and no position or name of an unopposed candidate shall appear on a ballot" in (a)(2).

The 2021 amendment added (a)(1), and redesignated the remaining subdivisions accordingly; and added (a)(6).

7-6-209. Reports of contributions — Candidates for county office.

(a) **REPORTS REQUIRED.** Except as provided in subsection (d) of this section, each candidate for county office or a person acting in the candidate's behalf shall:

(1)(A) For each year in which a candidate is not listed on a ballot for election, file an annual report of all contributions received and expenditures made during that year.

(B) The annual report shall be filed no later than fifteen (15) days after the end of the year;

(2) No later than seven (7) days prior to any preferential primary election, runoff election, general election, or special election in which the candidate's name appears on the ballot, file a preelection report of

all contributions received and expenditures made between the period covered by the previous report, if any, and the period ten (10) days before the election. In case of a runoff election, the report shall cover all contributions received and expenditures made during that period of time that begins after the date of the election from which the runoff arose and ends ten (10) days before the runoff election;

(3) No later than thirty (30) days after the end of the month in which the candidate's name has appeared on the ballot in any preferential primary election, runoff election, general election, or special election, or when only one (1) candidate qualifies for a particular office or position and no position or name of an unopposed candidate shall appear on a ballot, file a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed. A final report is required regardless of whether a candidate has received contributions or made expenditures in excess of five hundred dollars (\$500);

(4) File supplemental reports of all contributions received and expenditures made after the date of preparation of the final report, and the supplemental reports shall be filed within thirty (30) days after the receipt of a contribution or the making of an expenditure;

(5)(A) No later than thirty (30) days after the end of the month in which the candidate has withdrawn, a final report of all contributions received and expenditures made that have not been disclosed on reports previously required to be filed.

(B) If a candidate withdraws from the campaign, the candidate shall notify the county clerk in writing of the withdrawal; and

(6) If a candidate keeps remaining campaign funds after an election, the candidate shall continue filing the reports required by this subsection.

(b) CONTENTS OF REPORTS.

(1) The contribution and expenditure reports required by subsection (a) of this section shall indicate:

(A) The total amount of contributions received with loans stated separately, the total amount of expenditures made during the filing periods, and the cumulative amount of those totals for the entire election cycle;

(B) The name and address of each person, including the candidate, who made a contribution or contributions that in the aggregate exceeded fifty dollars (\$50.00);

(C) The contributor's principal place of business, employer, occupation, the amount contributed, the date the contribution was accepted by the candidate, and the aggregate contributed for each election;

(D) The name and address of each person, including the candidate, who contributed a nonmonetary item, together with a description of the item, the date of receipt, and the value, not including volunteer service by individuals;

(E) An itemization of all single expenditures made that exceeded one hundred dollars (\$100), including the amount of the expenditure,

the name and address of any person, including the candidate, to whom the expenditure was made, and the date the expenditure was made;

(F) A list of all paid campaign workers and the amount the workers were paid;

(G) A list of all expenditures by categories, including, but not limited to:

(i) Television, radio, print, or other advertising;

(ii) Direct mail;

(iii) Office supplies;

(iv) Rent;

(v) Travel;

(vi) Expenses;

(vii) Entertainment; and

(viii) Telephone;

(H) The total amount of all nonitemized expenditures made during the filing period; and

(I) The current balance of campaign funds.

(2)(A) When the candidate's campaign has ended, the final report shall also indicate which option under § 7-6-203(g) was used to dispose of any surplus of campaign funds, the amount of funds disposed of by the candidate, and the amount of funds retained by the candidate in accordance with § 7-6-201(3) [repealed].

(B) If the candidate's campaign has not ended, disposal of campaign funds is not required and the candidate may carry forward any remaining funds in the campaign to the general primary election, general election, or general runoff election for that same office.

(3)(A) Not later than fourteen (14) days after the deadline for filing for office, the county clerk shall notify each candidate in person or by mail of the deadlines for filing the ten-day preelection and final reports required by subsection (a) of this section and, at that time, furnish each candidate with the appropriate forms and instructions for complying with the deadlines.

(B) If notice is sent by mail, then the notice shall be postmarked within fourteen (14) days after the deadline for filing for office.

(c) **FILING OF REPORTS.** The reports required by this section shall be filed with the county clerk in the county in which the election is held. Reports shall be filed on the appropriate forms furnished by the Secretary of State.

(d) **REPORTS NOT REQUIRED.**

(1) A candidate who has not received contributions or made expenditures in excess of five hundred dollars (\$500) shall not be required to file any preelection reports required under subdivision (a)(1) of this section. In calculating the amount of contributions received or expenditures made for purposes of this exception, the payment of the filing fee from the candidate's personal funds shall not be considered as either a contribution or an expenditure.

(2) The preelection reports referenced in subdivision (a)(1) of this section are required only for candidates with opponents in those elections.

History. Acts 1975, No. 788, § 3; 1977, No. 312, § 1; A.S.A. 1947, § 3-1111; Acts 1987, No. 246, § 2; 1993, No. 1243, § 3; Init. Meas. 1996, No. 1, § 6; Acts 1999, No. 553, §§ 10-12; 2001, No. 1839, § 6; 2003, No. 195, § 5; 2007, No. 221, § 7; 2009, No. 1204, § 5; 2011, No. 721, § 8; 2013, No. 382, § 5; 2019, No. 240, § 5; 2021, No. 737, § 11.

Amendments. The 2019 amendment inserted “or when only one (1) candidate qualifies for a particular office or position and no position or name of an unopposed candidate shall appear on a ballot” in (a)(2).

The 2021 amendment added (a)(1), and redesignated the remaining subdivisions accordingly; and added (a)(6).

7-6-214. Publication of reports.

(a)(1) Upon proper filing, the information required in §§ 7-6-203, 7-6-207 — 7-6-210, 7-6-215, 7-6-216, and 7-6-220 shall constitute a public record and shall be available within twenty-four (24) hours of the reporting deadline to all interested persons and the news media.

(2) The Secretary of State is the official custodian of the records that are required to be:

(A) Filed with the Secretary of State; and

(B) Maintained under §§ 7-6-203, 7-6-207 — 7-6-210, 7-6-215, 7-6-216, and 7-6-220.

(b)(1) The Secretary of State shall post on his or her official website reports of contributions required under §§ 7-6-203, 7-6-207 — 7-6-210, 7-6-215, 7-6-216, and 7-6-220.

(2) The official website of the Secretary of State shall allow for searches of campaign contribution and expenditure report information required to be filed in electronic form under § 7-6-207(d)(1)(C)(i).

(c)(1) The Secretary of State shall maintain a list of all reports required under §§ 7-6-203, 7-6-207 — 7-6-210, 7-6-215, 7-6-216, and 7-6-220 not filed in electronic form.

(2) The list shall include:

(A) The name of the person filing the report;

(B) The type of report filed;

(C) The date the report was filed; and

(D) The designation “paper filer”.

(3) The list shall be posted on the official website of the Secretary of State.

(4) The list shall be organized by calendar year and updated at least monthly on a schedule to be determined by the Secretary of State.

History. Acts 1975, No. 788, § 7; A.S.A. 1947, § 3-1115; 2001, No. 564, § 2; 2015, No. 999, § 2; 2017, No. 318, § 4; 2017, No. 616, § 1; 2019, No. 1039, § 1.

Amendments. The 2019 amendment added (c).

7-6-215. Registration and reporting by approved political action committees.

(a)(1)(A) To qualify as an approved political action committee, the political action committee shall register with the Secretary of State within fifteen (15) days after accepting contributions during a calendar year that exceed five hundred dollars (\$500) in the aggregate.

(B) Registration shall be annually renewed by January 15, unless the political action committee has ceased to exist.

(C) Except as provided in subdivision (a)(1)(D) of this section, registration shall be on forms provided by the Secretary of State, and the contents therein shall be verified by an affidavit of an officer of the political action committee.

(D)(i) Registration with the Secretary of State under this section may be filed in electronic form through the official website of the Secretary of State if electronic filing is offered by the Secretary of State.

(ii) An electronic registration shall be verified by an officer of the political action committee.

(iii)(a) The Arkansas Ethics Commission shall approve a format used by the Secretary of State for registering as a political action committee in electronic form under subdivision (a)(1)(D)(i) of this section to ensure that all required information is requested.

(b) A format used by the Secretary of State for registering as a political action committee in electronic form shall provide that a registration filed in electronic form be rejected if it omits the name, street address, or telephone number of an individual designated as the resident agent for the political action committee.

(iv) The official website of the Secretary of State shall allow for searches of political action committee registration information filed in electronic form under subdivision (a)(1)(D)(i) of this section.

(E) Registration with the Secretary of State under this section may be filed in paper form if:

(i) The political action committee does not have access to the technology necessary to submit registration in electronic form;

(ii) Submitting registration in electronic form would constitute a substantial hardship for the political action committee; and

(iii) The political action committee submits a notarized affidavit that complies with § 7-6-231.

(2)(A) The political action committee shall maintain for a period of four (4) years records evidencing the name, address, and place of employment of each person that contributed to the political action committee, along with the amount contributed.

(B) Furthermore, the political action committee shall maintain for a period of four (4) years records evidencing the name and address of each candidate, ballot question committee, legislative question committee, political party, county political party committee, or other political action committee that received a contribution from the political action committee, along with the amount contributed.

(3)(A) The political action committee shall designate a resident agent who shall be an individual who resides in this state.

(B) No contribution shall be accepted from a political action committee and no expenditure shall be made by a political action committee that has not registered and does not have a resident agent.

(C) It shall be unlawful for a prohibited political action committee as defined in § 7-6-201 to make a contribution to a:

- (i) Ballot question committee;
- (ii) Legislative question committee;
- (iii) Political party;
- (iv) Political party committee; or
- (v) Political action committee.

(4)(A) An out-of-state political action committee, including a federal political action committee, shall be required to comply with the registration and reporting provisions of this section if the committee contributes more than five hundred dollars (\$500) in a calendar year to candidates, ballot question committees, legislative question committees, political parties, county political party committees, or other political action committees within this state.

(B) Subdivision (a)(4)(A) of this section shall not apply to:

(i) The national committee of any political party that is registered with the Federal Election Commission;

(ii) Any federal candidate committee that is registered with the Federal Election Commission;

(iii) Funds which a subordinate committee of the national committee of any political party that is registered with the Federal Election Commission transfers to the federal account of an organized political party as defined under § 7-1-101; or

(iv) Funds which a political action committee that is registered with the Federal Election Commission transfers to the federal account of an organized political party as defined under § 7-1-101.

(b) The registration form of an approved political action committee shall contain the following information:

(1) The name, address, and, where available, phone number of the political action committee and the name, address, phone number, and place of employment of each of its officers, provided if the political action committee's name is an acronym, then both it and the words forming the acronym shall be disclosed;

(2) The professional, business, trade, labor, or other interests represented by the political action committee, including any individual business, organization, association, corporation, labor organization, or other group or firm whose interests will be represented by the political action committee;

(3) The full name and street address, city, state, and zip code of each financial institution the political action committee uses for purposes of receiving contributions or making expenditures within this state;

(4) The name, street address, and telephone number of the individual designated as the resident agent for the political action committee;

(5) If the registration form is filed in paper form, a written acceptance of designation as a resident agent;

(6) A certification by a political action committee officer, under penalty of false swearing, that the information provided on the registration is true and correct; and

(7) A clause submitting the political action committee to the jurisdiction of the State of Arkansas for all purposes related to compliance with the provisions of this subchapter.

(c)(1) When a committee makes a change to any information required in subsection (b) of this section, an amendment shall be filed within ten (10) days to reflect the change.

(2) A committee failing to file an amendment shall be subject to a late filing fee of ten dollars (\$10.00) for each day the change is not filed.

(d)(1) Within fifteen (15) calendar days after the end of each calendar quarter, a political action committee shall file a quarterly report with the Secretary of State, including the following information:

(A) The total amount of contributions received and the total amount of contributions made during the filing period and the cumulative amount of those totals;

(B) The current balance of political action committee funds;

(C) The name and address of each person that made a contribution or contributions to the political action committee that exceeded five hundred dollars (\$500) in the aggregate during the calendar year, the contributor's place of business, employer, occupation, the date of the contribution, the amount contributed, and the total contributed for the year;

(D) The name and address of each candidate, ballot question committee, legislative question committee, political party, county political party committee, or other political action committee, if any, to whom or which the political action committee made a contribution or contributions that exceeded fifty dollars (\$50.00) in the aggregate during the filing period, with the amount contributed and the election for which the contribution was made;

(E) The name and address of each candidate, ballot question committee, legislative question committee, political party, county political party committee, or other political action committee, if any, to whom or which the political action committee contributed a nonmonetary item, together with a description of the item, the date the item was contributed, and the value of the item; and

(F) The total amount of expenditures made for administrative expenses and for each single expenditure that exceeded one hundred dollars (\$100), an itemization, including the amount of the expenditure, the name and address of the person to whom the expenditure was made, and the date the expenditure was made.

(2) Political action committee quarterly reports may be filed in electronic form through the official website of the Secretary of State if electronic filing is offered by the Secretary of State.

(3) The information required in subdivisions (d)(1)(C)-(F) of this section may be provided in the form of schedules attached to a report filed in paper form.

(4) The reports shall be verified by an affidavit of an officer of the political action committee stating that to the best of his or her knowledge and belief the information so disclosed is a complete, true, and accurate financial statement of the political action committee's contributions received and made.

(5)(A) A report is timely filed if it is filed in electronic form through the official website of the Secretary of State on or before the date that the report is due if the Secretary of State offers electronic filing of political action committee reports.

(B)(i) The Secretary of State shall receive reports in a readable electronic format that is acceptable to the Secretary of State and approved by the Arkansas Ethics Commission.

(ii) The Arkansas Ethics Commission shall approve the format used by the Secretary of State for the filing of political action committee reports in electronic form to ensure that all required information is requested.

(iii) The official website of the Secretary of State shall allow for searches of political action committee report information filed in electronic form.

(iv) A political action committee under this section may file reports in paper form under this section if:

(a) The political action committee does not have access to the technology necessary to submit reports in electronic form;

(b) Submitting reports in electronic form would constitute a substantial hardship for the political action committee; and

(c) The political action committee submits a notarized affidavit that complies with § 7-6-231.

(6)(A) A political action committee shall indicate on its quarterly report for the fourth quarter of each calendar year whether or not it intends to renew its registration for the next calendar year.

(B)(i) If a quarterly report for the fourth quarter is filed in paper form, the form utilized by the Secretary of State for filing shall require the political action committee to indicate whether or not it intends to renew its registration for the next calendar year.

(ii) A political action committee indicating that it will renew its registration for the next calendar year shall submit its registration form for the next calendar year at the same time as the quarterly report for the fourth quarter.

(iii) The Secretary of State shall not accept a quarterly report for the fourth quarter if:

(a) The political action committee indicates that it intends to renew its registration for the next calendar year; and

(b) The registration form for the next calendar year is not submitted at the same time as the quarterly report for the fourth quarter.

(C) If the Secretary of State offers electronic filing of political action committee reports, the format used by the Secretary of State

for the filing of political action committee reports in electronic form shall require a political action committee indicating that it intends to renew its registration for the next calendar year to renew its registration for the next calendar year before submitting its quarterly report for the fourth quarter.

History. Init. Meas. 1990, No. 1, § 6; 2015, No. 909, § 1; 2017, No. 616, § 2; Init. Meas. 1996, No. 1, § 7; Acts 1999, 2019, No. 1039, §§ 2, 3.
No. 553, §§ 15-17; 2001, No. 1839, § 7; **Amendments.** The 2019 amendment
2005, No. 2006, § 2; 2007, No. 221, § 8; added (a)(1)(E) and (d)(5)(B)(iv)(c).
2009, No. 473, § 5; 2011, No. 721, § 9;

7-6-218. Citizen complaints — Definition.

(a)(1) Any citizen may file a complaint with the Arkansas Ethics Commission against a person covered by this subchapter, by § 7-1-103(a)(1)-(4), (6), or (7); the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters, § 7-9-401 et seq.; § 21-1-401 et seq.; § 21-8-301 et seq.; the Disclosure Act for Lobbyists and State and Local Officials, § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901 et seq.; § 21-8-1001 et seq.; and Arkansas Constitution, Article 19, §§ 28-30, for an alleged violation of the subchapters or sections. For purposes of this subdivision (a)(1), the Arkansas Ethics Commission shall be considered a citizen.

(2) A complaint must be filed within four (4) years after the alleged violation occurred. If the alleged violation is the failure to file a report or the filing of an incorrect report, the complaint shall be filed within four (4) years after the date the report was due.

(b)(1)(A) Upon a complaint stating facts constituting an alleged violation signed under penalty of perjury by any person, the Arkansas Ethics Commission shall investigate the alleged violation of this subchapter or § 7-1-103(a)(1)-(4), (6), or (7); the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters, § 7-9-401 et seq.; § 21-1-401 et seq.; § 21-8-301 et seq.; the Disclosure Act for Lobbyists and State and Local Officials, § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901 et seq.; § 21-8-1001 et seq.; and Arkansas Constitution, Article 19, §§ 28-30.

(B) The Arkansas Ethics Commission shall immediately notify any person under investigation of the investigation and of the nature of the alleged violation.

(C) The Arkansas Ethics Commission in a document shall advise the complainant and the respondent of the final action taken, together with the reasons for the action, and such document shall be a public record.

(D) Filing of a frivolous complaint shall be a violation of this subchapter. For purposes of this section, “frivolous” means clearly lacking any basis in fact or law. In any case in which the Arkansas Ethics Commission has dismissed a complaint, the respondent may

request in writing that the Arkansas Ethics Commission make a finding as to whether or not the complaint filed was frivolous. In the event that the Arkansas Ethics Commission finds that the complaint was frivolous, the respondent may file a complaint seeking sanctions as provided in subdivision (b)(4) of this section.

(2) If, after the investigation, the Arkansas Ethics Commission finds that probable cause exists for a finding of a violation, the respondent may request a hearing. The hearing shall be a public hearing.

(3)(A) The Arkansas Ethics Commission shall keep a record of its investigations, inquiries, and proceedings.

(B)(i) Except as provided in subdivision (b)(3)(B)(ii) of this section, all proceedings, records, and transcripts of any investigations or inquiries shall be kept confidential by the Arkansas Ethics Commission, unless the respondent requests disclosure of documents relating to investigation of the case, in case of a hearing under subdivision (b)(2) of this section, or in case of judicial review of a decision of the Arkansas Ethics Commission pursuant to § 25-15-212.

(ii)(a) Through its members or staff, the Arkansas Ethics Commission may disclose confidential information to proper law enforcement officials, agencies, and bodies, or as may be required to conduct its investigation.

(b) If an investigation or inquiry concerns an attorney or judge, the Arkansas Ethics Commission may, through its members or staff, disclose confidential information to the Supreme Court Committee on Professional Conduct or the Judicial Discipline and Disability Commission.

(C) Thirty (30) days after any final adjudication in which the Arkansas Ethics Commission makes a finding of a violation, all records relevant to the investigation and upon which the Arkansas Ethics Commission has based its decision, except working papers of the Arkansas Ethics Commission and its staff, shall be open to public inspection.

(4) If the Arkansas Ethics Commission finds a violation of this subchapter; § 7-1-103(a)(1)-(4), (6), or (7); § 21-1-401 et seq.; § 21-8-301 et seq.; the Disclosure Act for Lobbyists and State and Local Officials, § 21-8-401 et seq., § 21-8-601 et seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901 et seq.; § 21-8-1001 et seq.; or Arkansas Constitution, Article 19, §§ 28-30, then the Arkansas Ethics Commission shall do one (1) or more of the following, unless good cause be shown for the violation:

(A) Issue a public letter of caution or warning or reprimand;

(B)(i) Notwithstanding the provisions of §§ 7-6-202, 7-9-409, 21-8-403, and 21-8-903, impose a fine of not less than fifty dollars (\$50.00) nor more than three thousand five hundred dollars (\$3,500) for negligent or intentional violation of this subchapter; the Disclosure Act for Public Initiatives, Referenda, and Measures Referred to Voters, § 7-9-401 et seq.; § 21-8-301 et seq.; the Disclosure Act for Lobbyists and State and Local Officials, § 21-8-401 et seq., § 21-8-

601 et seq., § 21-8-701 et seq., and § 21-8-801 et seq.; § 21-8-901 et seq.; § 21-8-1001 et seq.; or Arkansas Constitution, Article 19, §§ 28-30.

(ii) The Arkansas Ethics Commission shall adopt rules governing the imposition of such fines in accordance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(iii) All moneys received by the Arkansas Ethics Commission in payment of fines shall be deposited into the State Treasury as general revenues;

(C) Order the respondent to file or amend a statutorily required disclosure form; or

(D)(i) Report its finding, along with such information and documents as it deems appropriate, and make recommendations to the proper law enforcement authorities.

(ii) When exercising the authority provided in this subdivision (b)(4), the Arkansas Ethics Commission is not required to make a finding of a violation of the laws under its jurisdiction.

(5)(A)(i) Except as provided in subdivision (b)(5)(A)(iii) of this section, the Arkansas Ethics Commission shall complete its investigation of a complaint filed pursuant to this section and take final action within two hundred ten (210) days of the filing of the complaint.

(ii) Except as provided in subdivision (b)(5)(A)(iii) of this section, if a hearing under subdivision (b)(2) of this section or other hearing of adjudication is conducted, all action on the complaint by the Arkansas Ethics Commission shall be completed within two hundred forty (240) days.

(iii) If the Arkansas Ethics Commission requires additional time to complete its investigation under subdivision (b)(5)(A)(i) of this section or to complete its hearing or action under subdivision (b)(5)(A)(ii) of this section and gives written notice to the person who is under investigation or the subject of the hearing or action, the Arkansas Ethics Commission may extend the time to complete the investigation, hearing, or action by no more than sixty (60) days.

(B) However, such time shall be tolled during the pendency of any civil action, civil appeal, or other judicial proceeding involving those particular Arkansas Ethics Commission proceedings.

(c) Any final action of the Arkansas Ethics Commission under this section shall constitute an adjudication for purposes of judicial review under § 25-15-212.

History. Init. Meas. 1990, No. 1, § 6; Acts 1995, No. 349, § 2; 1995, No. 352, § 2; 1999, No. 553, § 22; 2001, No. 1839, §§ 11-13; 2003, No. 195, § 7; 2007, No. 221, § 10; 2013, No. 1115, § 1; 2015, No. 1280, § 9; 2017, No. 256, § 1; 2019, No. 341, § 1; 2019, No. 547, § 1.

Amendments. The 2019 amendment

by No. 341 substituted “three thousand five hundred dollars (\$3,500)” for “two thousand dollars (\$2,000)” in (b)(4)(B)(i).

The 2019 amendment by No. 547 added “Except as provided in subdivision (b)(5)(A)(iii) of this section” in (b)(5)(A)(i) and (b)(5)(A)(ii); and added (b)(5)(A)(iii).

CASE NOTES**Validity of Statute.**

Because the Arkansas Ethics Commission investigates campaign-finance violations, levies fines against candidates, and makes referrals to law enforcement, the

commissioners had a strong enough connection to a campaign finance law to make them proper defendants in a suit asserting a constitutional challenge. *Jones v. Jegley*, 947 F.3d 1100 (8th Cir. 2020).

7-6-220. Reporting of independent expenditures.

(a) A person who or an independent expenditure committee which makes independent expenditures in an aggregate amount or value in excess of five hundred dollars (\$500) in a calendar year shall file reports with the Secretary of State:

(1) No later than thirty (30) days prior to preferential primary elections, general elections, and special elections covering the period ending thirty-five (35) days prior to such elections;

(2) No later than seven (7) days prior to preferential primary elections, runoff elections, general elections, and special elections covering the period ending ten (10) days prior to such elections; and

(3) As for a final report, no later than thirty (30) days after the end of the month in which the last election is held at which the candidate seeks nomination or election.

(b) Such reports shall include:

(1) In the case of an individual making such an expenditure, the name, address, telephone number, principal place of business, employer, and occupation of the individual;

(2) In the case of a committee, the name, address, employer, and occupation of its officers;

(3) In the case of a person who is not an individual, the principal name of the entity, the address, and the name, address, employer, and occupation of its officers; and

(4) The same information required of candidates for office other than school district, township, municipal, or county office as set forth in § 7-6-207(b)(1).

(c) The information required in § 7-6-207(b)(1) may be provided in the form of a schedule or schedules attached to the report.

(d) The report shall be verified by an affidavit of an officer of the committee stating that to the best of his or her knowledge and belief the information disclosed is a complete, true, and accurate financial statement of the committee's contributions received and made.

(e)(1) A report is timely filed if it is filed in electronic form through the official website of the Secretary of State on or before the date that the report is due.

(2)(A) The Secretary of State shall receive reports in a readable electronic format that is acceptable to the Secretary of State and approved by the Arkansas Ethics Commission.

(B) The commission shall approve the format used by the Secretary of State for the filing of independent expenditure reports in electronic form to ensure that all required information is requested.

(C) The official website of the Secretary of State shall allow for searches of independent expenditure report information filed in electronic form.

(3) A person or independent expenditure committee under this section may file reports in paper form under this section if:

(A) The person or independent expenditure committee does not have access to the technology necessary to submit reports in electronic form;

(B) Submitting reports in electronic form would constitute a substantial hardship for the person or independent expenditure committee; and

(C) The person or independent expenditure committee submits a notarized affidavit that complies with § 7-6-231.

History. Init. Meas. 1996, No. 1, § 8; Acts 2001, No. 1839, § 14; 2005, No. 1284, § 6; 2011, No. 721, § 11; 2017, No. 616, § 4; 2019, No. 1039, § 4. **Amendments.** The 2019 amendment inserted “committee” in (e)(3)(B); and added (e)(3)(C).

7-6-222. Tax credits for certain individual political contributions.

(a) Pursuant to rules to be adopted by the Department of Finance and Administration, a credit against individual Arkansas income taxes shall be allowed for money contributions made by the taxpayer in a taxable year to one (1) or more of the following:

(1) A candidate seeking nomination or election to a public office at an election or to the candidate’s campaign committee;

(2) An approved political action committee as defined in § 7-6-201; or

(3) An organized political party as defined in § 7-1-101.

(b) The credit allowed by subsection (a) of this section shall be the aggregate contributions, not to exceed fifty dollars (\$50.00), on an individual tax return, or the aggregate contributions, not to exceed one hundred dollars (\$100), on a joint return.

(c) Credits for contributions qualifying under this section and made prior to April 15 in a calendar year may be applied to the return filed for the previous taxable year.

History. Init. Meas. 1996, No. 1, § 10; Acts 1999, No. 1446, § 1; 2003, No. 774, § 1; 2005, No. 1284, § 7; 2007, No. 221, § 11; 2019, No. 315, § 421. **Amendments.** The 2019 amendment substituted “rules” for “regulations” in the introductory language of (a).

7-6-224. Authority of local jurisdictions.

(a) Municipalities, counties, and townships may establish reasonable limitations on:

(1) Time periods that candidates for local office shall be allowed to solicit contributions;

(2) Limits on contributions to local candidates at amounts lower than those set by state law; and

(3) Voluntary campaign expenditure limits for candidates seeking election to their respective governing bodies.

(b) Enforcement of any limitation established under subsection (a) of this section is the responsibility of the municipality, county, or township establishing the limitation.

History. Init. Meas. 1996, No. 1, § 12; Acts 2019, No. 240, § 6.

“may” for “shall have the authority to” in the introductory language of (a); and added (b).

Amendments. The 2019 amendment added the (a) designation; substituted

7-6-226. Registration and reporting by county political party committees.

(a)(1)(A) To qualify as a county political party committee, the committee shall register with the Secretary of State within fifteen (15) days after accepting contributions during a calendar year that exceed five thousand dollars (\$5,000) in the aggregate.

(B) The registration shall be renewed annually by January 15, unless the committee has ceased to exist.

(C) Registration shall be on forms provided by the Secretary of State, and the contents of the form shall be verified by an affidavit of an officer of the committee.

(2)(A) The committee shall maintain for a period of four (4) years records evidencing the name, address, and place of employment of each person that contributed to the committee, along with the amount contributed.

(B) Furthermore, the committee shall maintain for a period of four (4) years records evidencing the name and address of each candidate who received a contribution from the committee, along with the amount contributed.

(3)(A) The committee shall appoint a treasurer who is a qualified elector of the State of Arkansas.

(B) No contribution shall be accepted from a committee and no expenditure shall be made by a committee that has not registered and which does not have a treasurer.

(4) No county political party committee shall accept a contribution from a prohibited political action committee as defined in § 7-6-201.

(b) The county political party committee shall disclose on the registration form the following information:

(1) The name, address, and, when available, phone number of the committee and the name, address, phone number, and place of employment of each of its officers. If the committee's name is an acronym, then both the acronym and the words forming the acronym shall be disclosed;

(2) The political party with which the county political party committee is affiliated;

(3) The full name and street address, city, state, and zip code of the financial institution in this state that the committee designates as its official depository for the purposes of depositing all money contributions that it receives in this state and making all expenditures in this state; and

(4) A written acceptance of appointment by the treasurer.

(c)(1) Within fifteen (15) calendar days after the end of each calendar quarter, county political party committees shall file a quarterly report with the Secretary of State, including the following information:

(A) The total amount of contributions received and the total amount of contributions made during the reporting period and the cumulative amount of those totals;

(B) The current balance of committee funds;

(C) The name and address of each person who made a contribution or contributions to the committee that exceeded five hundred dollars (\$500) in the aggregate, the contributor's place of business, employer, or occupation, the date of the contribution, the amount contributed, and the total contributed for the year;

(D) The name and address of each candidate or committee, if any, to whom or which the committee made a contribution or contributions that exceeded fifty dollars (\$50.00) in the aggregate during the filing period, with the amount contributed and the election for which the contribution was made;

(E) The name and address of each candidate or committee, if any, to whom or which the committee contributed a nonmonetary item, together with a description of the item, the date the item was contributed, and the value of the item;

(F) The total amount of expenditures made for administrative expenses and for each single expenditure that exceeded one hundred dollars (\$100), an itemization including the amount of the expenditure, the name and address of the person to whom the expenditure was made, and the date the expenditure was made; and

(G) Any change in the information required by subsection (b) of this section.

(2) The reports shall be verified by an affidavit of an officer of the committee stating that to the best of his or her knowledge and belief the information disclosed is a complete, true, and accurate financial statement of the committee's contributions received and made.

(3)(A) A report is timely filed if it is either hand delivered or mailed to the Secretary of State, properly addressed, postage prepaid, bearing a postmark indicating receipt by the post office or common carrier on the date that the report is due.

(B) The Secretary of State shall accept via facsimile any report if the original is received by the Secretary of State within ten (10) days of the date of transmission.

(C) The Secretary of State may receive reports in a readable electronic format acceptable to the Secretary of State and approved by the Arkansas Ethics Commission.

History. Acts 2005, No. 2006, § 3; 2007, No. 221, § 12; 2009, No. 473, § 8; 2019, No. 240, § 7.

Amendments. The 2019 amendment substituted “reporting period” for “filing period” in (c)(1)(A).

7-6-228. Campaign signs and materials.

(a) A candidate may retain campaign signs, campaign literature, and other printed campaign materials that:

- (1) Were purchased by the campaign;
 - (2) Were reported on the appropriate contribution and expenditure report for the campaign at the time of the purchase; and
 - (3) Are retained for use in a future campaign by the same candidate.
- (b) A candidate:

(1) May reuse the campaign signs, campaign literature, and other printed campaign materials under subsection (a) of this section in future campaigns; and

(2) Is not required to list the campaign signs, campaign literature, and other printed campaign materials under subsection (a) of this section in future reports filed under this subchapter.

(c)(1)(A) Campaign signs, campaign literature, and other printed campaign materials shall clearly contain the words “Paid for by” followed by the name of the candidate, committee, or person who paid for the campaign sign, campaign literature, or other printed campaign materials.

(B) The candidate printing the campaign sign, campaign literature, or other printed campaign materials shall be responsible for including the language required by subdivision (c)(1)(A) of this section.

(2) Subdivision (c)(1)(A) of this section applies only to campaign signs, campaign literature, and other printed campaign materials created by or sponsored by a political candidate, the campaign of a political candidate, a political action committee, or an independent expenditure committee.

History. Acts 2015, No. 1280, § 10; 2017, No. 787, § 2; 2019, No. 1058, § 1; 2021, No. 755, § 1.

A.C.R.C. Notes. Acts 2017, No. 787, § 3, as amended by Acts 2019, No. 222, § 1, provided: “Applicability. A candidate running for election to any public office who possesses or creates a campaign sign, campaign literature, or other printed campaign material that does not comply with this act is exempt from compliance with this act if the campaign sign, campaign literature, or other printed campaign material was created before the effective date of this act.”

It is unclear when the exemption described in Acts 2019, No. 222 takes effect. The Uncodified Section 3 of Acts 2017, No. 787, which is being amended by Act 222, was in effect August 2017.

Amendments. The 2019 amendment added “a political action committee, or an independent expenditure committee” in (c)(2).

The 2021 amendment redesignated (c)(1) as (c)(1)(A); deleted “under this section” preceding “shall clearly” in (c)(1)(A); added (c)(1)(B); and substituted “Subdivision (c)(1)(A)” for “Subdivision (c)(1)” in (c)(2).

CASE NOTES

Violation Not Found.

Arkansas Ethics Commission's decision that a circuit judge candidate had violated subdivision (c)(1) of this section was not supported by substantial evidence; although an ad that appeared in a magazine did not have the required "paid for by"

disclaimer, the candidate ordered an ad that was to include the "paid for by" language and the magazine had not included the necessary and requested language. Ark. Ethics Comm'n v. Weaver, 2021 Ark. 38, 617 S.W.3d 680 (2021).

7-6-230. Alternative to electronic filing of reports.

(a)(1) A candidate required to file campaign contribution and expenditure reports in electronic form under § 7-6-207 may file reports in paper form under this section.

(2)(A) A candidate filing reports in paper form under subdivision (a)(1) of this section shall submit with his or her first paper report in an election cycle a notarized affidavit on a form prepared by the Secretary of State.

(B) The Secretary of State shall:

(i) Not accept a report in paper form under subdivision (a)(1) of this section if a notarized affidavit was not submitted with the first paper report in the election cycle;

(ii) Provide written notice to the candidate within five (5) business days if the report in paper form was not filed or accepted; and

(iii) Provide the reason the report in paper form was not filed or accepted.

(C) The Secretary of State shall develop electronic reporting forms, including without limitation:

(i) A cover sheet for a reporting period;

(ii) Campaign contribution reports; and

(iii) Campaign expenditure reports.

(D) The Secretary of State shall develop electronic reporting forms in a manner that allows a candidate to:

(i) Fill out an electronic form for each reporting period in an electronic word processing file, portable document format, or equivalent format that may be saved in a read-only format;

(ii) Upload the electronic reporting forms electronically by an upload to the internet or delivered by electronic media to the Secretary of State; and

(iii) Combine all electronic forms into a single document that is available to the public in an electronically searchable format.

(b)(1) The Secretary of State shall make available to candidates wishing to file reports in paper form under this section:

(A) Information on the deadlines for filing required reports; and

(B)(i) Appropriate forms and instructions for complying with the deadlines.

(ii) The Arkansas Ethics Commission shall approve the forms and instructions used by the Secretary of State to ensure that all required information is requested.

(2) Reports shall be filed on the forms furnished by the Secretary of State, except that computer-generated contribution and expenditure reports shall be accepted by the Secretary of State and the commission provided that all of the requisite elements are included.

(c)(1)(A) A report submitted in paper form under this section other than a preelection report is timely filed if it is either hand delivered or mailed to the Secretary of State, properly addressed, and postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on the date that the report is due.

(B) A preelection report submitted in paper form under this section is timely filed if it is received by the Secretary of State no later than seven (7) days before the election for which it is filed.

(2) The Secretary of State shall accept a report via facsimile, provided the original is received by the Secretary of State within ten (10) days of the date of facsimile transmission.

(d)(1) The Secretary of State shall make available campaign contribution and expenditure reports submitted in paper form, carryover fund reports submitted in paper form, and affidavits accompanying reports filed in paper form, on a portion of the official website of the Secretary of State.

(2) The Secretary of State shall comply with the requirements of § 7-6-214(c) regarding the “paper filer” designation and publication requirements for all reports submitted in paper form.

History. Acts 2017, No. 318, § 5; 2019, No. 1039, §§ 4[5], 5[6]; 2021, No. 1029, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-207(b), the reference to “carryover fund reports in electronic form under § 7-6-203” in subdivision (a)(1) as amended by Act 1029 was effectively repealed by Act 737 with the remainder of the subdivision being codified.

Amendments. The 2019 amendment

inserted the (a)(2)(B)(i) designation, and added (a)(2)(B)(ii) and (a)(2)(B)(iii); and added the (d)(1) designation, and added (d)(2).

The 2021 amendment deleted “if” following “under this section” in (a)(1) and deleted (a)(1)(A) and (B); deleted “declaring that” following “Secretary of State” in (a)(2)(A) and deleted (a)(2)(A)(i) through (iii); and added (a)(2)(C) and (D).

7-6-231. Alternative to electronic filing — Reporting of independent expenditures — Registration and reports for political action committees.

(a)(1) A person required to file reports or register in electronic form under § 7-6-215 or § 7-6-220 may file reports or register in paper form under this section if:

(A) The person does not have access to the technology necessary to submit reports or registration in electronic form; and

(B) Submitting reports or registration in electronic form would constitute a substantial hardship for the person.

(2)(A) A person filing reports or registration in paper form under subdivision (a)(1) of this section shall submit with the first report or registration a notarized affidavit on a form prepared by the Secretary of State declaring that:

(i) The person does not have access to the technology necessary to submit reports or registration in electronic form;

(ii) Submitting reports or registration in electronic form would constitute a substantial hardship for the person; and

(iii) The person agrees to file all other reports in paper form for the duration of the period of registration.

(B) The Secretary of State shall:

(i) Not accept a report or registration in paper form under subdivision (a)(1) of this section if a notarized affidavit was not submitted with the:

(a) Registration of a political action committee; or

(b) First report of a person or independent expenditure committee;

(ii) Provide written notice to the political action committee within five (5) business days if the registration in paper form was not filed or accepted;

(iii) Provide written notice to a political action committee, person, or independent expenditure committee within five (5) business days if a report in paper form was not filed or accepted; and

(iv) Provide the reason the registration or report in paper form was not filed or accepted.

(b)(1) The Secretary of State shall make available to persons wishing to file reports in paper form under this section:

(A) Information on the deadlines for filing required reports; and

(B)(i) Appropriate forms and instructions for complying with the deadlines.

(ii) The Arkansas Ethics Commission shall approve the forms and instructions used by the Secretary of State under this section to ensure that all required information is requested.

(2) Reports shall be filed on the forms furnished by the Secretary of State, except that computer-generated contribution and expenditure reports shall be accepted by the Secretary of State and the commission provided that all of the requisite elements are included.

(c)(1)(A) A report submitted in paper form under this section other than a preelection report is timely filed if it is either hand delivered or mailed to the Secretary of State, properly addressed, and postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on or before the date that the report is due.

(B) A preelection report submitted in paper form under this section is timely filed if it is received by the Secretary of State no later than seven (7) days before the election for which it is filed.

(2) The Secretary of State shall accept a report via facsimile, provided the original is received by the Secretary of State within ten (10) days of the date of the facsimile's transmission.

(d)(1) The Secretary of State shall make available reports submitted in paper form on a portion of the official website of the Secretary of State.

(2) The Secretary of State shall comply with the requirements of § 7-6-214(c) regarding the “paper filer” designation and publication requirements for all reports submitted in paper form.

History. Acts 2019, No. 1039, § 6[7].

CHAPTER 7

NOMINATIONS AND PRIMARY ELECTIONS

SUBCHAPTER.

1. METHODS OF NOMINATION.
2. PRIMARY ELECTIONS GENERALLY.
3. CONDUCT OF PRIMARY.
4. CERTIFICATION OF NOMINATIONS.

SUBCHAPTER 1 — METHODS OF NOMINATION

SECTION.

- 7-7-103. Filing as an independent — Petitions — Disqualification.
- 7-7-104. Vacancy in nomination — Alternative methods for filling — Tie vote.

SECTION.

- 7-7-106. Filling vacancies in candidacy for nomination — Preferential primary.

7-7-103. Filing as an independent — Petitions — Disqualification.

(a)(1) A person desiring to have his or her name placed upon the ballot as an independent candidate without political party affiliation for any United States office other than President of the United States or Vice President of the United States or state, county, township, or district office in any general election in this state shall file, during the party filing period for the year in which the election is to be held, a political practices pledge, an affidavit of eligibility, and a notice of candidacy stating the name and title the candidate proposes to appear on the ballot and identifying the elective office sought, including the position number, if any.

(2)(A) An independent candidate shall state the same position, including the position number, if any, on his or her petition.

(B) When a candidate has identified the position sought on the notice of candidacy, the candidate shall not be allowed to change the position but may withdraw a notice of candidacy and file a new notice of candidacy designating a different position before the deadline for filing.

(b)(1)(A) The person shall furnish by 12:00 noon on May 1 of the year in which the general election is to be held petitions signed by not less than three percent (3%) of the qualified electors in the county, township, or district in which the person is seeking office, but in no event shall more than two thousand (2,000) signatures be required for a district, county, or township office.

(B) If the person is a candidate for state office or for United States Senator in which a statewide race is required, the person shall file petitions signed by not less than three percent (3%) of the qualified electors of the state or which contain ten thousand (10,000) signatures of qualified electors, whichever is the lesser.

(2) Each elector signing the petition shall be a registered voter, and the petition shall be directed to the official with whom the person is required by law to file the petition to qualify as a candidate and shall request that the name of the person be placed on the ballot for election to the office mentioned in the petition.

(3)(A) A petition shall be on a form prescribed by the Secretary of State that includes without limitation a designated space for:

- (i) The signature of the qualified elector;
- (ii) The printed name of the qualified elector;
- (iii) The date of the signature of the qualified elector; and
- (iv) The address of the qualified elector.

(B) A petition shall be circulated not earlier than ninety (90) calendar days before the deadline for filing petitions to qualify as an independent candidate unless the number of days is reduced by a proclamation, ordinance, resolution, order, or other authorized document for a special election under § 7-11-101 et seq.

(C)(i) The person filing for office as an independent candidate shall submit with the petition an affidavit that swears:

(a) The signatures were not collected for a period over ninety (90) days;

(b) The beginning and ending dates for collection of signatures on the petition are those as indicated on the affidavit; and

(c) The signatures were collected and the petition was executed and submitted in compliance with the law.

(ii) The affidavit under subdivision (b)(3)(C)(i) of this section shall be on a form prescribed by the Secretary of State.

(4) In determining the number of qualified electors in any county, township, or district or in the state, the total number of votes cast therein for all candidates in the preceding general election for the office of Governor shall be conclusive of the number of qualified electors therein for the purposes of this section.

(5) If the number of days in which the petition for independent candidacy may be circulated is reduced by a proclamation, ordinance, resolution, order, or other authorized document for a special election under § 7-11-101 et seq., the number of signatures required on the petition shall be reduced proportionately.

(c) Signatures that are incorrectly obtained or submitted under this section shall not be counted.

History. Acts 1969, No. 465, Art. 1, § 5; Acts 1989, No. 591, §§ 1, 2; 1993, No. 512, 1971, No. 261, § 3; 1972 (1st Ex. Sess.), § 7; 1997, No. 886, § 2; 1999, No. 77, § 1; No. 42, §§ 1, 2; 1975, No. 700, § 1; 1977, 2001, No. 472, § 1; 2001, No. 1553, § 19; No. 731, § 1; 1981, No. 960, § 1; 1985, No. 2001, No. 1789, § 6; 2003, No. 1165, § 6; 1055, § 3; A.S.A. 1947, §§ 3-105, 3-105.1; 2003, No. 1731, § 3; 2005, No. 67, § 16;

2007, No. 1020, § 13; 2007, No. 1049, § 21; 2009, No. 188, § 1; 2009, No. 1480, § 41; 2013, No. 1356, § 1; 2015, No. 340, §§ 1, 2; 2019, No. 68, §§ 1, 2.

deleted "the petition under this section" following "affidavit of eligibility" in (a)(1); and substituted "furnish by 12:00 noon on May 1 of the year in which the general election is to be held" for "file" in (b)(1)(A).

Amendments. The 2019 amendment

7-7-104. Vacancy in nomination — Alternative methods for filling — Tie vote.

(a) Except as provided in subsection (b) of this section, nominees of a political party to fill a vacancy in nomination, as defined in § 7-1-101, shall be declared by:

(1) Certificate of the chair and secretary of any convention of delegates held following receipt of the Governor's letter certifying vacancy; or

(2)(A) A special primary election called, held, and conducted in accordance with the rules of the party.

(B) A special primary election may be called only if the special primary election can be called, held, conducted, and certified and certificates of nomination filed at least seventy (70) days before the general election.

(b)(1) In case of a tie vote for the same office at a general primary election, a vacancy in nomination for that office shall exist.

(2)(A) Nominees of a political party to fill a vacancy in nomination resulting from a tie vote for the same office at a general primary election shall be declared by certificate of the chair and secretary of an appropriate convention of delegates held following receipt of the Governor's letter certifying a vacancy.

(B) A convention of delegates shall be conducted in accordance with the rules of the party.

(c)(1) When a vacancy in nomination occurs as a result of death or when the person who received the majority of votes cast at the preferential primary election or the general primary election notifies the state committee of the political party of his or her intent to refuse nomination due to serious illness, moving out of the area from which elected as the party's nominee, or filing for another office, the state committee of the political party shall notify the Governor within ten (10) calendar days after the date of death or the date the party was notified of intent to refuse nomination as to whether the party chooses to fill the vacancy in nomination at a special election or a convention.

(2) If the party fails to notify the Governor within the ten-calendar-day period, the vacancy in nomination shall not be filled nor shall the vacancy in nomination be filled if it occurred for any reason other than death, serious illness, the candidate's moving out of the area from which elected as the party's nominee, or filing for another office.

(d)(1) If the party notifies the Governor within the time prescribed in subsection (c) of this section of the desire to have a special primary election, the Governor shall issue a proclamation within five (5) days calling the special election and establishing the deadline for filing as a

candidate for nomination, drawing for ballot position, and issuing and filing certificates of nomination. The special primary election shall occur no earlier than thirty (30) days nor later than sixty (60) days after the filing deadline. The candidate who receives the most votes in the special primary election shall be declared the nominee. There shall be no runoff election. In the event of a tie for the most votes, the nominee shall be determined by lot in a public meeting of the appropriate party committee.

(2) When the certificate of nomination is filed for a nominee who is filling a vacancy in nomination, the filing authority shall immediately certify the name of the nominee to the appropriate county board of election commissioners.

(e) If the party notifies the Governor that it desires to fill the vacancy in nomination by convention, the convention shall occur and be conducted in accordance with respective political party rules after the notice is provided to the Governor.

(f)(1) If the party's nominee is not selected in time to file his or her certificate of nomination with the appropriate party authority at least seventy-six (76) days before the general election, the nominee's name shall not appear on the general election ballot but the name of the person who vacated the nomination shall appear on the ballot, and votes cast for the name of the person appearing on the ballot shall be counted for the nominee but only if the certificate of nomination is duly filed at least forty-seven (47) days before the general election.

(2)(A) If votes for a nominee whose name does not appear on the ballot are to be counted under subdivision (f)(1) of this section, the county board of election commissioners shall post a notice at each affected polling place stating each election in which a vote for the person appearing on the ballot shall be counted for the nominee.

(B) A copy of the notice shall be included with the instructions sent to absentee voters.

History. Acts 1969, No. 465, Art. 1, §§ 5, 10; 1971, No. 261, §§ 3, 4; 1972 (1st Ex. Sess.), No. 42, § 1; 1975, No. 700, § 1; A.S.A. 1947, §§ 3-105, 3-110; Acts 1997, No. 1082, § 3; 2005, No. 2145, § 12; 2007, No. 1049, § 22; 2011, No. 203, § 2; 2011, No. 1185, § 8; 2019, No. 648, § 5.

Amendments. The 2019 amendment substituted "following receipt" for "within

twenty-five (25) days" in (a)(1) and (b)(2)(A); substituted "ten (10) calendar days" for "five (5) days" in (c)(1); substituted "ten-calendar-day period" for "five-day period" in (c)(2); substituted "and be conducted in accordance with respective political party rules" for "no later than twenty-five (25) days" in (e); and deleted (e)(2).

7-7-106. Filling vacancies in candidacy for nomination — Preferential primary.

(a) A political party may fill a vacancy if:

(1) A person is running unopposed in a preferential primary and cannot accept the nomination due to death; or

(2) A person is running unopposed in a preferential primary and notifies the party that he or she will not accept the nomination due to a serious illness.

(b) The vacancy shall be filled in accordance with respective political party rules.

(c) If the vacancy is filled more than sixty-six (66) days before the preferential primary election, the name of the person filling the vacancy shall be printed on the ballot instead of the name of the person who vacated the candidacy.

(d) If the vacancy is filled less than sixty-six (66) days before the date of the preferential primary election, the name of the person subsequently elected to fill the vacancy in candidacy shall be declared the nominee even if the name of the person who vacated the candidacy appears on the preferential primary ballot.

(e) If the vacancy in candidacy is not filled before the date of the preferential primary election, a vacancy in nomination shall be deemed to exist on the date of the preferential primary election and the vacancy in nomination shall be filled under § 7-7-104.

History. Acts 2001, No. 1772, § 1; 2007, No. 1049, § 24; 2013, No. 1126, § 13; 2019, No. 648, § 6.

Amendments. The 2019 amendment substituted "in accordance with respective political party rules" for "within ten (10)

calendar days after the death or notification to the political party" in (b); deleted former (c) and redesignated the remaining subsections accordingly; and inserted "election" in (d).

SUBCHAPTER 2 — PRIMARY ELECTIONS GENERALLY

SECTION.

7-7-201. Law governing primary elections.

7-7-203. Dates.

SECTION.

7-7-205. Petition requirements for new political parties.

Effective Dates. Acts 2019, No. 164, § 2: Feb. 18, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the current laws concerning signature requirements for certain petitions are insufficient to reflect the will of the voters of Arkansas; that this act must become effective before the date upon which petitions can be circulated in order to preserve fair access to the elections; and that this act is immediately necessary to ensure voter and candidate rights are

observed in the upcoming election. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

7-7-201. Law governing primary elections.

(a) The cost of political party primaries shall be borne by the State of Arkansas and shall be paid from an appropriation made to the State Board of Election Commissioners for that purpose.

(b)(1) Within each county, the political party primary elections shall be conducted by the county board of election commissioners.

(2) The State Board of Election Commissioners shall have authority to adopt rules for the administration of primary elections consistent with the provisions of this chapter.

(3) The State Board of Election Commissioners may withhold reimbursement of funds to the counties for state-funded elections for failure to comply with the rules developed by the State Board of Election Commissioners for the administration of primary elections or applicable state election laws until all requirements are met to the satisfaction of the State Board of Election Commissioners.

(4) Each political party shall be responsible for determining the qualifications of candidates seeking nomination by the political party, provide necessary applications for candidacy, accept and process the applications, and determine the order of its ballot.

(c) All political party primary elections shall be conducted in conformity with the provisions of this act, and these elections are declared to be legal elections.

(d) In cases of circumstances or procedures which may arise in connection with any primary election for which there is no provision of this act governing the circumstances or procedures, they shall be governed by the general election laws of this state or by party rules if there is no applicable general election law.

(e) The State Board of Election Commissioners shall not take or accept any funding, grants, or gifts from any source other than from:

- (1) A city or incorporated town;
- (2) The governing authority of the county;
- (3) The State of Arkansas; or
- (4) The United States Government.

History. Acts 1969, No. 465, Art. 1, § 7; A.S.A. 1947, § 3-107; Acts 1995, No. 901, § 2; 2001, No. 1175, § 1; 2007, No. 987, § 2; 2021, No. 961, § 2. **Amendments.** The 2021 amendment added (e).

7-7-203. Dates.

(a) The general primary election shall be held:

(1) For years in which the office of Governor will appear on the ballot at the general election, on the third Tuesday in June preceding the general election; and

(2) For years in which the office of President of the United States will appear on the ballot at the general election, on the Tuesday four (4) weeks following the preferential primary election.

(b) The preferential primary election shall be held:

(1) For years in which the office of Governor will appear on the ballot at the general election, on the Tuesday four (4) weeks before the general primary election; and

(2) For years in which the office of President of the United States will appear on the ballot at the general election, on the first Tuesday after the first Monday in March.

(c)(1) The party filing period shall be a one-week period beginning and ending on the following dates and times:

(A) For years in which the office of Governor will appear on the ballot at the general election, beginning at 12:00 noon one (1) week prior to the first day in March and ending at 12:00 noon on the first day in March; and

(B) For years in which the office of President of the United States will appear on the ballot at the general election, beginning at 12:00 noon on the first Monday in November preceding the general primary election and ending at 12:00 noon on the seventh day thereafter.

(2) Party pledges, if any, and affidavits of eligibility shall be filed, any filing fees of a political party, if any, shall be paid, and party certificates shall be issued by the party during regular office hours during the party filing period.

(3) A party certificate and the political practices pledge shall be filed with the county clerk or the Secretary of State, as the case may be, during regular office hours during the party filing period.

(4) The name of a candidate who fails to file a party certificate and political practices pledge by the filing deadline with the Secretary of State or county clerk, as the case may be, shall not appear on the ballot.

(5) Party pledges, if any, shall be filed, filing fees, if any, shall be paid, and party certificates and political practices pledges shall be filed for special primary elections on or before the deadline established by proclamation of the Governor or other entity authorized to call a special primary election.

(d)(1) At least seventy-five (75) days before the preferential primary election, the Secretary of State shall certify to the various county committees and to the various county boards of election commissioners a list of the names of all candidates who have filed party certificates with the Secretary of State within the time required by law.

(2) At least seventy-five (75) days before the preferential primary election, the county clerk shall certify to the county committees and to the county board of election commissioners a list of the names of all candidates who have filed party certificates with the county clerk within the time required by law.

(e)(1) The county board of election commissioners shall convene, at the time specified in the notice to the members given by the chair of the board, no later than the tenth day after each primary election for the purpose of canvassing the returns and certifying the election results.

(2) If no time is specified for the meeting of the county board of election commissioners, the meeting shall be at 5:00 p.m.

(f) The county convention of a political party holding a primary election shall be held:

(1) No sooner than the day after the general primary election is held or, if no general primary election is held, no sooner than the day after the preferential primary election is held; and

(2) No later than one hundred (100) days before the general election.

(g)(1)(A) The county board of election commissioners shall certify to the county clerk and the county committee a list of all candidates who received the most votes or are unopposed on the ballot for county, township, and municipal offices, and the political parties' county committee members and delegates.

(B) The list under subdivision (g)(1)(A) of this section shall be provided no later than:

(i) Ten (10) days after certification of the:

(a) General primary election; or

(b) If no general primary election will be held, the preferential primary election; and

(ii) One hundred (100) days before the general election.

(2) At the same time, the county board of election commissioners shall certify to the Secretary of State and the secretary of the state committee the results of the contests for all United States, state, and district offices. Immediately after ascertaining the results for all United States, state, and district offices, the Secretary of State shall certify to the state committee a list of all nominated candidates for the offices.

(h)(1)(A) The Secretary of State shall at least one hundred (100) days before the date of the general election notify by registered mail the chair and secretary of the state committee of the respective political parties that a certificate of nomination is due for all nominated candidates for United States, state, and district offices in order that the candidates' names be placed on the ballot of the general election.

(B)(i) The state committee shall issue certificates of nomination to all nominated candidates for United States, state, and district offices, who shall file the certificates with the Secretary of State at least ninety (90) days before the general election.

(ii) However, if the chair and secretary of the state committee of the respective political parties are not properly notified as directed by subdivision (h)(1)(A) of this section, the failure of a candidate to file a certificate of nomination by the deadline shall not prevent that candidate's name from being placed on the ballot of the general election.

(2)(A) Each county clerk shall at least one hundred (100) days before the date of the general election notify by registered mail the chairs and secretaries of the county committees of the respective political parties that a certified list of all nominated candidates for county, township, and municipal offices is due and shall be filed with the county clerk in order that the candidates' names be placed on the ballot for the general election.

(B)(i) Each county political party committee shall issue the certified list on behalf of those nominated candidates and submit the certified list to the county clerk and county board of election commissioners at least ninety (90) days before the general election.

(ii) However, if the chairs and secretaries of the county committees of the respective political parties are not properly notified as directed by subdivision (h)(2)(A) of this section, the failure of a certified list to be filed by the deadline shall not prevent any candidate's name from being placed on the ballot of the general election.

History. Acts 1969, No. 465, Art. 1, § 13; 1971, No. 261, § 23; 1971, No. 347, §§ 5-7; 1971, No. 829, §§ 1-3; 1972 (1st Ex. Sess.), No. 37, §§ 1, 2; 1975, No. 601, §§ 1, 2; 1977, No. 888, §§ 1, 2; 1981, No. 448, § 1; A.S.A. 1947, § 3-113; Acts 1987, No. 123, §§ 13, 14; 1987, No. 248, §§ 2, 16; 1993, No. 966, § 2; 1995, No. 723, § 2; 1995, No. 724, § 2; 1995, No. 901, § 4; 1997, No. 886, § 3; 2001, No. 1475, § 3; 2003, No. 1165, § 7; 2003, No. 1731, § 4; 2007, No. 1020, § 14; 2007, No. 1049, § 25; 2009, No. 959, § 36; 2011, No. 1185, § 9; 2015 (1st Ex. Sess.), No. 4, § 1; 2017,

No. 1088, § 1; 2019, No. 545, § 2; 2019, No. 649, §§ 1-3.

Amendments. The 2019 amendment by No. 545 rewrote (a), (b), and (c)(1).

The 2019 amendment by No. 649 rewrote (f); added the (g)(1)(A) designation; in (g)(1)(A), deleted "nominated" preceding "candidates", and inserted "who received the most votes or are unopposed on the ballot"; added (g)(1)(B); and, in (h)(2)(B)(i), inserted "political party", and inserted "and county board of election commissioners".

7-7-205. Petition requirements for new political parties.

(a)(1) A group desiring to form a new political party shall do so by filing a petition with the Secretary of State.

(2) The petition shall contain at the time of filing the signatures of registered voters in an amount that equals or exceeds three percent (3%) of the total votes cast for the Office of Governor in the immediately preceding general election for Governor.

(3) The Secretary of State shall not accept for filing any new party petition that is not prima facie sufficient at the time of filing.

(4)(A) No signature shall be counted unless the date of the signature appears on the petition.

(B) No signature that is dated more than ninety (90) days before the date the petition is submitted shall be counted.

(5)(A) The petition shall declare the intent of organizing a political party, the name of which shall be stated in the declaration.

(B) No political party or group shall assume a name or designation that is so familiar, in the opinion of the Secretary of State, as to confuse or mislead the voters at an election.

(6) A new political party that wishes to select nominees for the next general election shall file a sufficient petition no later than sixty (60) days before the party filing period.

(b)(1) The Secretary of State shall determine the sufficiency of the signatures submitted within thirty (30) days of filing.

(2) If the petition is determined to be insufficient, the Secretary of State shall forthwith notify the sponsors in writing, through their designated agent, and shall set forth his or her reasons for so finding.

(c)(1) Upon certification of sufficiency of the petition by the Secretary of State, a new political party shall be declared by the Secretary of State.

(2)(A) A new political party formed by the petition process shall nominate candidates by convention for the first general election after certification.

(B)(i) A convention under subdivision (c)(2)(A) of this section shall be held no later than 12:00 noon on the date of the preferential primary election.

(ii) Certificates of nomination shall be filed with the Secretary of State or the county clerk no later than 12:00 noon on the date of the preferential primary election.

(C) A convention under subdivision (c)(2)(A) of this section may be held in any manner authorized by the rules of the new political party.

(3) A candidate to be nominated by convention shall file a political practices pledge with the Secretary of State or county clerk, as the case may be, during the party filing period.

(4) If the new party maintains party status by obtaining three percent (3%) of the total votes cast for the office of Governor or nominees for presidential electors at the first general election after certification, the new political party shall nominate candidates in the party primary as set forth in § 7-7-101 et seq.

(5) Any challenges to the certification of the sufficiency of the petition by the Secretary of State shall be filed with the Pulaski County Circuit Court.

History. Acts 1997, No. 886, § 4; 2003, No. 1165, §§ 8, 9; 2007, No. 821, § 1; 2009, No. 188, § 2; 2009, No. 959, § 37; 2011, No. 1036, § 2; 2013, No. 1356, § 2; 2017, No. 297, § 1; 2019, No. 164, § 1.

Amendments. The 2019 amendment substituted “registered voters in an

amount that equals or exceeds three percent (3%) of the total votes cast for the Office of Governor in the immediately preceding general election for Governor” for “at least ten thousand (10,000) registered voters in the state” in (a)(2).

CASE NOTES

Constitutionality.

Petition requirements in this section for certification of new political parties that required 27,000 registered voters’ signatures, with signatures less than 90 days old, and a petition deadline of 425 days prior to the general election, were likely

unconstitutional, and a preliminary injunction was upheld reducing the number of signatures to that required under prior law before the 2019 amendment. *Libertarian Party of Ark. v. Thurston*, 962 F.3d 390 (8th Cir. 2020).

SUBCHAPTER 3 — CONDUCT OF PRIMARY

SECTION.

7-7-304. Names to be included on ballots — Withdrawal — Unopposed candidates — Designation of position — Necessity of general primary.

SECTION.

7-7-305. Printing of ballots — Form — Draw for ballot position.

**7-7-304. Names to be included on ballots — Withdrawal —
Unopposed candidates — Designation of position —
Necessity of general primary.**

(a)(1) The Secretary of State shall certify to all county boards of election commissioners full lists of the names of all candidates who have filed party certificates with him or her to be placed on the ballots in their respective counties at the preferential primary election not less than:

(A) Seventy-five (75) days before a preferential primary election that is held in May under § 7-7-203; and

(B) Ninety-two (92) days before a preferential primary election that is held in March under § 7-7-203.

(2) A name of a person shall not be certified and shall not be placed on the ballot if prior to the certification deadline a candidate:

(A) Notifies the Secretary of State in writing, signed by the candidate and acknowledged before an officer authorized to take acknowledgements, of his or her desire to withdraw as a candidate for the office or position; or

(B) Dies.

(b)(1) The county clerk shall certify to the county board of election commissioners full lists of the names of all candidates who have filed party certificates with him or her to be placed on the ballot at the preferential primary election not less than:

(A) Seventy-five (75) days before a preferential primary election that is held in May under § 7-7-203; and

(B) Ninety-two (92) days before a preferential primary election that is held in March under § 7-7-203.

(2) A name of a person shall not be certified and shall not be placed on the ballot if prior to the certification deadline a candidate:

(A) Notifies the county clerk in writing, signed by the candidate and acknowledged before an officer authorized to take acknowledgements, of his or her desire to withdraw as a candidate for the office or position; or

(B) Dies.

(c)(1) The votes received by a person whose name appeared on the preferential primary ballot and who withdrew or died after the certification of the ballot shall be counted.

(2) If the person receives enough votes to win the nomination, a vacancy in nomination shall exist.

(3) If the person receives enough votes to advance to the general primary election, the person's name shall be printed on the general primary election ballot.

(4) If the person receives enough votes to win the general primary election, a vacancy in nomination shall exist.

(d) When only one (1) candidate qualifies for a particular office or position, the office or position and the name of the unopposed candidate shall be printed on the political party's ballot in all primary elections.

(e)(1) When there are two (2) or more nominees to be selected for the same office, such as state senator, state representative, justice of the peace, council member, or for any other office, the proper committee shall require the candidates to designate in writing a particular position, i.e., “position number one (1)”, “position number two (2)”, “position number three (3)”, etc., at the time that a party pledge is required to be filed with the secretary of the committee.

(2) When a candidate has once filed and designated for a certain position, that candidate shall not be permitted to thereafter change the position.

(f)(1) If at the preferential primary election for a political party a candidate receives a majority of the votes cast for that office or position, the person shall be declared the party nominee and it shall not be necessary for the candidate’s name to appear on the ballot at the general primary election.

(2) If no candidate receives a majority of the votes cast for an office or position at the preferential primary for a political party, the names of the two (2) candidates of the political party who received the highest number of votes for an office or a position shall be placed upon the ballots at the general primary election.

History. Acts 1969, No. 465, Art. 1, § 10; 1971, No. 261, § 4; A.S.A. 1947, § 3-110; Acts 1989, No. 912, § 5; 1995, No. 901, § 8; 2003, No. 332, § 1; 2007, No. 1020, § 15; 2007, No. 1049, § 26; 2009, No. 1480, § 44; 2011, No. 1185, § 10; 2015 (1st Ex. Sess.), No. 4, § 2; 2017, No. 730, § 4; 2017, No. 879, § 2; 2019, No. 545, § 3; 2019, No. 1013, § 3.

Amendments. The 2019 amendment by No. 545, in (a)(1), substituted “The Secretary of State” for “Not less than seventy-five (75) days before each preferential primary election, the Secretary of

State” and added “not less than”; added (a)(1)(A) and (a)(1)(B); in (b)(1), substituted “The county clerk” for “Not less than seventy-five (75) days before each preferential primary election, the county clerk” and added “not less than”; and added (b)(1)(A) and (b)(1)(B).

The 2019 amendment by No. 1013, in (d), substituted “the office or position and the name of the unopposed candidate shall be printed” for “it is not necessary for the office or position and the name of the unopposed candidate to be printed”.

7-7-305. Printing of ballots — Form — Draw for ballot position.

(a) The ballots of the primary election shall be provided by the county board of election commissioners. The form of the ballots shall be the same as is provided by law for ballots in general elections in this state. A different color ballot may be used to distinguish between political parties.

(b)(1) The order in which the names of the respective candidates are to appear on the ballots at all preferential and general primary elections shall be determined by lot at the public meeting of the county board of election commissioners held not later than:

(A) Seventy-two (72) days before a preferential primary election that is held in May under § 7-7-203; and

(B) Eighty-nine (89) days before a preferential primary election that is held in March under § 7-7-203.

(2) The county board of election commissioners shall give at least ten (10) days' written notice of the time and place of the meeting to the chairs of the county committees if the chairs are not members of the county board of election commissioners, and at least three (3) days before the meeting, shall publish notice of the time and place of holding the meeting in some newspaper of general circulation in the county.

(c)(1)(A) A person who files for an elective office in this state may use not more than three (3) given names, one (1) of which may be a nickname or any other word used to identify the person to the voters, and may add as a prefix to his or her name the title or an abbreviation of an elective public office the person currently holds.

(B) A person may use as the prefix the title of a nonpartisan judicial office in an election for a nonpartisan judicial office only if:

(i) The person is currently serving in a nonpartisan judicial office to which the person has been elected in the last election for the office; or

(ii) The person:

(a) Is a candidate for the office of circuit judge or district judge;

(b) Is currently serving in the office of circuit judge or district judge as an appointee; and

(c) Has been serving in that position for at least twelve (12) months.

(C) A nickname shall not include a professional or honorary title.

(2) The person filing for office shall include his or her surname in addition to any given names permitted under subdivision (c)(1)(A) of this section.

(3) The names and titles as proposed to be used by each candidate on the political practices pledge or, if the political practices pledge is not filed by the filing deadline, then the names and titles that appear on the party certificate shall be reviewed no later than one (1) business day after the filing deadline by the Secretary of State for state and district offices and by the county board of election commissioners for county, township, school, and municipal offices.

(4)(A) The name of every candidate shall be printed on the ballot in the form as certified by either the Secretary of State or the county board of election commissioners.

(B) However, the county board of election commissioners may substitute an abbreviated title if the ballot lacks space for the title requested by a candidate.

(C) The county board of election commissioners shall immediately notify a candidate whose requested title is abbreviated by the county board of election commissioners.

(5) A candidate shall not be permitted to change the form in which his or her name will be printed on the ballot after the deadline for filing the political practices pledge.

History. Acts 1969, No. 465, Art. 1, § 3-114; Acts 1991, No. 408, § 1; 1995, § 14; 1971, No. 261, § 7; A.S.A. 1947, No. 901, § 9; 1999, No. 1335, § 1; 2001,

No. 799, § 1; 2001, No. 1835, § 1; 2003, No. 1731, § 6; 2007, No. 559, § 6; 2007, No. 1020, § 16; 2007, No. 1049, § 27; 2009, No. 959, § 39; 2011, No. 1185, § 11; 2013, No. 1075, § 1; 2015 (1st Ex. Sess.), No. 4, § 3; 2019, No. 527, § 1; 2019, No. 545, § 4.

Amendments. The 2019 amendment by No. 527 inserted (c)(2), and redesignated the remaining subdivisions accordingly.

The 2019 amendment by No. 545 added the (b)(1), (b)(1)(A), and (b)(2) designations; substituted “a preferential primary election that is held in May under § 7-7-203” for “the preferential primary election” in (b)(1)(A); added (b)(1)(B); and substituted “the county board of election commissioners, and at least” for “the board, and at least” in (b)(2).

CASE NOTES

ANALYSIS

Judicial Candidate Title.
Surname.

Judicial Candidate Title.

Although, contrary to § 7-10-103, an appointed district court judge who had filed as a candidate for the Court of Appeals erroneously used the title “Judge” in her signature of the political practices pledge, section 7-10-103 did not restrict courts from ordering a change on the ballot and current law only sanctioned those who did not sign the pledge; there was no penalty for those found to have included inaccurate information on the pledge. *Barrett v. Thurston*, 2020 Ark. 36, 593 S.W.3d 1 (2020).

Surname.

Appointed district court judge who had filed as a candidate for the Court of Appeals was not disqualified because she used her maiden surname on the political practices pledge rather than her married surname. The record indicated that the candidate was known professionally by her maiden name, and her use of her maiden name on the ballot title did not serve to undermine the spirit of the political practices pledge by obfuscating her true identity, nor did it run afoul of this section, which requires only that a candidate use their “surname”. *Barrett v. Thurston*, 2020 Ark. 36, 593 S.W.3d 1 (2020).

SUBCHAPTER 4 — CERTIFICATION OF NOMINATIONS

SECTION.

7-7-402. Filing certificates of nomination.

7-7-402. Filing certificates of nomination.

(a)(1) All certified lists of nominees as candidates for presidential electors and members of the United States Congress and for state, judicial, and district officers, either by convention, primary election, or electors, shall be filed with the Secretary of State.

(2) All certified lists of nominees for county, township, and municipal offices shall be filed with the county board of election commissioners and the county clerk of the county in which they are to be voted for no later than ninety (90) days before the general election.

(b) Certified lists of nomination shall be filed within the time provided in § 7-7-203.

History. Acts 1969, No. 465, Art. 1, § 3-121; Acts 1999, No. 656, § 1; 2019, § 21; 1975, No. 601, § 4; A.S.A. 1947, No. 649, § 4.

Amendments. The 2019 amendment added “no later than ninety (90) days before the general election” in (a)(2).

CHAPTER 8

FEDERAL ELECTIONS

SUBCHAPTER.

3. PRESIDENTIAL ELECTORS.

SUBCHAPTER 3 — PRESIDENTIAL ELECTORS

SECTION.

7-8-302. Election and certification of electors — Ballots — Contesting conventions — Vacancy.

7-8-302. Election and certification of electors — Ballots — Contesting conventions — Vacancy.

Choosing and election of electors of President of the United States and Vice President of the United States shall be in the following manner:

(1)(A) In each year in which a President of the United States and Vice President of the United States are chosen, each political party or group in the state shall choose by its state convention electors of President of the United States and Vice President of the United States. The state convention of the party or group shall also choose electors at large if any are to be appointed for the state.

(B) The state convention of the party or group, by its chair and secretary, shall certify to the Secretary of State the total list of electors together with electors at large so chosen. The certificate shall be filed no later than September 15 in the year of the election. The filing of the certificate with the Secretary of State shall be deemed and taken to be the choosing and selection of the electors of this state, if the party or group is successful at the polls, as provided in this subchapter, in choosing their candidates for President of the United States and Vice President of the United States.

(C) The certification by the respective political parties or groups in this state of electors of President of the United States and Vice President of the United States shall be made to the Secretary of State within two (2) days after the state convention;

(2)(A) Should more than one (1) certificate of choice and selection of electors of the same political party or group be filed by contesting conventions or contesting groups, it shall be the duty of the constitutional officers of this state within ten (10) days after the adjournment of the last of the conventions to meet in the office of the Governor and determine which set of nominees for electors of the

party or group was chosen and selected by the authorized convention of the party or group.

(B) The Secretary of State shall notify the state officers of the date, time, and place of the meeting.

(C)(i) At the meeting, a majority of the officers present, after notice to the chair and secretaries or managers of the conventions or groups and after a hearing, shall determine which set of electors was chosen by the authorized convention and shall so announce and publish that fact.

(ii) The decision shall be final, and the set of electors determined by the state officers to be chosen shall be the list or set of electors to be deemed elected if that party is successful at the polls, as herein provided;

(3) Should a vacancy occur in the choice of an elector, the vacancy may be filled by the state executive committee of the party or group, to be certified by the committee to the Secretary of State;

(4)(A) The names of the candidates of the several political parties or groups for electors of President of the United States and Vice President of the United States shall not be printed on the official ballot to be voted on in the election to be held on the day provided in § 7-8-301. In lieu of the names of the candidates for electors, the name of the candidate for President of the United States and the name of the candidate for Vice President of the United States with the particular political party designation of each shall be printed on the ballot. Each voter in this state may choose and elect one (1) list or set of electors from the several lists or sets of electors chosen and selected by the respective political parties or groups, by placing an appropriate mark on the ballot.

(B) Placing a cross within the square before the bracket enclosing the names of President of the United States and Vice President of the United States shall not be deemed and taken as a direct vote for the candidates for President of the United States and Vice President of the United States, or either of them, but shall only be deemed and taken to be a vote for the entire list or set of electors chosen by the political party or group so certified to the Secretary of State as herein provided. Voting by means of placing a cross in the appropriate place following the names of the candidates for President of the United States and Vice President of the United States shall not be deemed or taken as a direct vote for the candidates for President of the United States and Vice President of the United States, or either of them, but instead, as to the presidential vote, as a vote for the entire list or set of electors chosen by that political party or group so certified to the Secretary of State as herein provided;

(5)(A)(i) In order to have the name of a political party's candidates for President of the United States and Vice President of the United States printed on the ballot, a political party shall hold a presidential preferential primary election.

(ii) A new political party formed under the petition process may nominate by convention if the presidential election is the first general election after certification as a party by the Secretary of State.

(B) A political group desiring to have the names of its candidates for President of the United States and Vice President of the United States printed on the ballot shall file a petition with the Secretary of State by noon on the first Monday of August of the year of the election. The petition shall contain at the time of filing the names of five thousand (5,000) qualified electors of the state declaring their desire to have printed on the ballot the names of their candidate for President of the United States and Vice President of the United States. The Secretary of State shall verify the sufficiency of the petition within ten (10) days from the filing of the petition. If the petition is determined to be insufficient, the Secretary of State shall notify in writing the political group through its designated agent and shall set forth his or her reasons for so finding.

(C) Any challenges to the certification of the Secretary of State shall be filed in the Pulaski County Circuit Court.

(D) No later than 12:00 noon on the seventy-fifth day before the election, a political group that qualifies by petition to place its candidate on the ballot shall submit a certificate of choice stating the names of its candidates for President of the United States and Vice President of the United States, signed under oath by either the chair, vice chair, or secretary of the political group's convention; and

(6)(A) Persons desiring to have their names printed on the ballot as independent candidates for President of the United States and Vice President of the United States shall file a petition with the Secretary of State by noon on the first Monday of August of the year of the election. The petition shall contain at the time of filing the names of five thousand (5,000) qualified electors of the state declaring their desire to have printed on the ballot the names of the persons desiring their names to be printed on the ballot as independent candidates for President of the United States and Vice President of the United States. The Secretary of State shall verify the sufficiency of the petition within ten (10) days from the filing of the petition. If the petition is determined to be insufficient, the Secretary of State shall notify in writing the persons desiring to have their names printed on the ballot as independent candidates for President of the United States and Vice President of the United States at the address or telephone number submitted with the petition and shall set forth his or her reasons for so finding.

(B) Any challenges to the certification of the Secretary of State shall be filed in the Pulaski County Circuit Court.

(C) By September 15 in the year of the election, independent candidates who qualify by petition to be on the ballot shall certify to the Secretary of State the total list of electors together with electors at large. The filing of the certificate with the Secretary of State shall be deemed and taken to be the choice and selection of the electors of

this state, if the independent candidate is successful at the polls, as provided in this subchapter.

History. Acts 1969, No. 465, Art. 2, § 7; A.S.A. 1947, § 3-207; Acts 1991, No. 242, § 1; 1997, No. 450, § 5; 2001, No. 473, § 1; 2005, No. 501, § 3; 2007, No. 822, §§ 1, 2; 2009, No. 26, § 6; 2009, No. 375, § 7; 2009, No. 959, §§ 42, 43; 2011, No. 1185, § 12; 2021, No. 273, §§ 1, 2.

Amendments. The 2021 amendment substituted “five thousand (5,000) qualified electors” for “one thousand (1,000) qualified electors” in (5)(B) and (6)(A).

CHAPTER 9

INITIATIVES, REFERENDA, AND CONSTITUTIONAL AMENDMENTS

SUBCHAPTER.

1. PETITION AND ELECTION PROCEDURE.
2. LEGISLATIVE PROPOSAL OF CONSTITUTIONAL AMENDMENTS.
6. PAID CANVASSERS.

SUBCHAPTER 1 — PETITION AND ELECTION PROCEDURE

SECTION.

- 7-9-103. Signing of petition — Penalty for falsification — Notice of suspected forgery.
- 7-9-104. Form of initiative petition — Sufficiency of signatures.
- 7-9-107. Filing of original draft before circulation.
- 7-9-109. Form of verification — Penalty for false statement.
- 7-9-110. Designation of number and popular name.

SECTION.

- 7-9-111. Determination of sufficiency of petition — Corrections.
- 7-9-112. Right of review.
- 7-9-113. Publication of notice.
- 7-9-124. Voter registration signature imaging system — Creation of fund.
- 7-9-126. Count of signatures.

Effective Dates. Acts 2019, No. 376, § 14: Mar. 8, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act amends the process for circulating initiative petitions and referendum petitions; and that the provisions of this act should become effective immediately so that its provisions apply to all petitions circulated after the passage of the act to avoid confusion in petition circulation. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Gov-

ernor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.” The emergency clause for Acts 2019, No. 376 was held to be defective in *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403.

Acts 2019, No. 898, § 16: July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2019 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the

event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2019 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2019."

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

Acts 2021, No. 951, § 9: Apr. 27, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that petition canvassers in the State of Arkansas have been approaching Arkansas voters without first passing the required criminal history and criminal record searches; that the use of canvassers who have not passed criminal history and criminal record searches poses a threat to the health and safety of voters who may give personal information to canvassers with disqualifying offenses; that this act protects voters from criminal canvassers; and that this act is immediately necessary because the Supreme Court's decision in *Thurston v. Safe Surgery Arkansas*, 2021 Ark. 55, has invalidated the current version of § 7-9-601, leaving voters with inadequate protections from criminal canvassers. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

7-9-103. Signing of petition — Penalty for falsification — Notice of suspected forgery.

(a)(1)(A) A person who is a registered voter of this state may sign his or her own name and print his or her own name, address, birth date, and the date of signing on an initiative or referendum petition in his or her own proper handwriting, and not otherwise, to order an initiative or referendum vote upon a proposed amendment or a proposed or referred act.

(B) If a person signing a petition under subdivision (a)(1)(A) of this section requires assistance due to disability, another person:

(i) May print the name, address, birth date, and the date of signing; and

(ii) Shall sign and print his or her name in the margin of the petition.

(2)(A) A person who is a registered voter of a municipality or county of this state may sign his or her own name and print his or her own name, address, birth date, and the date of signing on an initiative or

referendum petition in his or her own proper handwriting, and not otherwise, to order an initiative or referendum vote upon a proposed or referred ordinance.

(B) If a person signing a petition under subdivision (a)(2)(A) of this section requires assistance due to disability, another person:

(i) May print the name, address, birth date, and the date of signing; and

(ii) Shall sign and print his or her name in the margin of the petition.

(3) A person who is under eighteen (18) years of age shall not act as a canvasser.

(4) A person shall not act as a paid canvasser on a statewide initiative or referendum petition if the sponsor has not provided the information required under § 7-9-601 to the Secretary of State before the person solicits signatures on a petition.

(5) A person shall not act as a canvasser unless he or she is a citizen of the United States.

(6) A person shall not act as a canvasser unless he or she is a resident of this state.

(b) A person commits a Class A misdemeanor if the person knowingly:

(1) Signs a name other than his or her own name to a petition;

(2) Signs his or her name more than one (1) time to a petition;

(3) Signs a petition when he or she is not legally entitled to sign the petition;

(4) Prints a name, address, or birth date other than his or her own on a petition unless the signer requires assistance due to disability and the person complies with this section; or

(5) Prints the date of signing for another person unless the signer requires assistance due to disability and the person complies with this section.

(c) A person commits a Class A misdemeanor if the person, acting as a canvasser, notary, sponsor, or agent of a sponsor:

(1) Signs a name other than his or her own to a petition;

(2) Prints a name, address, or birth date other than his or her own on a petition unless the signer requires assistance due to disability and the person complies with this section;

(3) Solicits or obtains a signature to a petition knowing that the person signing is not qualified to sign the petition;

(4) Knowingly pays a person any form of compensation in exchange for signing a petition as a petitioner;

(5) Accepts or pays money or anything of value for obtaining signatures on a petition when the person acting as a canvasser, sponsor, or agent of a sponsor knows that the person acting as canvasser's name or address is not included on the sponsor's list filed with the Secretary of State under § 7-9-601;

(6) Knowingly misrepresents the purpose and effect of the petition or the measure affected for the purpose of causing a person to sign a petition;

(7) As a canvasser, knowingly makes a false statement on a petition verification form;

(8) As a notary, fails to witness a canvasser's affidavit by witnessing the signing of the instrument in person and either personally knowing the signer or being presented with proof of identity of the signer; or

(9) As a sponsor, files a petition part with the official charged with verifying the signatures knowing that the petition part contains one (1) or more false or fraudulent signatures unless each false or fraudulent signature is clearly stricken by the sponsor before filing.

(d) When the official charged with verifying the signatures has reasonable grounds to believe that one (1) or more signatures on a petition is forged, the official shall report the suspected forgery and basis for suspecting forgery to:

(1) The Division of Arkansas State Police, in the case of a statewide petition; or

(2) The prosecuting attorney of the county, in the case of a local petition.

History. Acts 1913, No. 135, § 3; C. & M. Dig., § 7505; Pope's Dig., § 9564; Acts 1943, No. 195, § 2; A.S.A. 1947, §§ 2-202, 2-401; Acts 1991, No. 719, § 1; 1997, No. 646, § 3; 2013, No. 1413, § 3; 2013, No. 1432, § 10; 2015, No. 1219, § 1; 2019, No. 376, §§ 3, 4; 2021, No. 951, § 1.

Amendments. The 2019 amendment

added (b)(4) and (b)(5); and deleted "excluding signatures apparently signed by one (1) spouse for another" following "petition is forged" in the introductory language of (d).

The 2021 amendment added (a)(5) and (a)(6).

CASE NOTES

Effective Date of 2019 Amendment.

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was "to avoid confusion in petition circulation"; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. *Safe Sur-*

gery Ark. v. Thurston, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376's new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner's referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

7-9-104. Form of initiative petition — Sufficiency of signatures.

(a) The petition for an ordinance, act, or amendment proposed by initiative shall be on substantially the following form:

"INITIATIVE PETITION

To the Honorable _____

Secretary of State of the State of Arkansas, or County Clerk, or City Clerk

We, the undersigned registered voters of the State of Arkansas, or _____ County, Arkansas, or City of _____, or Incorporated Town of _____, Arkansas (as the case may be), respectfully propose the following amendment to the Constitution of the State or act or ordinance (as the case may be), and by this, our petition, order that the same be submitted to the people of said state, or county, or municipality (as the case may be), to the end that the same may be adopted, enacted, or rejected by the vote of the registered voters of said (state, county, or municipality) at the regular general election to be held on the ____ day of ____, 20____, and each of us for himself or herself says:

I have personally signed this petition; I am a registered voter of the State of Arkansas, or _____ County, Arkansas, or City of _____, or Incorporated Town of _____, Arkansas (as the case may be), and my printed name, date of birth, residence, city or town of residence, and date of signing this petition are correctly written after my signature.

(Here insert popular name and ballot title of initiated measure.)
(In the case of a proposed initiated act or ordinance, insert the following:

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ARKANSAS, OR _____ COUNTY, ARKANSAS, OR CITY OF _____ OR INCORPORATED TOWN OF _____, ARKANSAS (as the case may be)):

(Here insert full text of initiated measure.)"

(b) No additional sheets of voter signatures shall be attached to any petition unless the sheets contain the full language of the petition.

(c)(1) The signature section of the petition shall be formatted and shall contain the number of signature lines prescribed by the Secretary of State.

(2) Before the circulation of a statewide petition for signatures, the sponsor shall file a printed petition part with the Secretary of State in the exact form that will be used for obtaining signatures.

History. Acts 1911 (1st Ex. Sess.), No. 2, § 4; C. & M. Dig., § 9761; Pope's Dig., § 13285; A.S.A. 1947, § 2-203; Acts 1989, No. 280, § 1; 1991, No. 42, § 1; 1997, No. 646, § 4; 2001, No. 789, § 1; 2005, No. 67,

§ 23; 2013, No. 1413, §§ 4, 5; 2019, No. 376, § 5.

Amendments. The 2019 amendment deleted former (b), and redesignated former (c) and (d) as (b) and (c).

CASE NOTES

Effective Date of 2019 Amendment.

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was "to avoid confusion in petition circulation"; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for

that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376's new

requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner's referen-

dum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

7-9-107. Filing of original draft before circulation.

(a) Before any initiative petition or referendum petition ordering a vote upon any amendment or act shall be circulated for obtaining signatures of petitioners, the sponsors shall file the original draft with the Secretary of State.

(b) The original draft shall include:

- (1) The full text of the proposed measure;
- (2) A ballot title for the proposed measure; and
- (3) A popular name for the proposed measure.

(c) The Secretary of State shall return to the sponsor a file-marked copy of the original draft that shall serve as evidence that the original draft was filed in compliance with this section.

(d) The sponsor may begin circulating an initiative petition or referendum petition upon receipt of the file-marked copy under subsection (c) of this section.

History. Acts 1943, No. 195, § 4; 1977, No. 208, § 1; A.S.A. 1947, § 2-208; Acts 1989, No. 280, § 3; 1989, No. 912, § 6; 2013, No. 1413, §§ 8, 9; 2019, No. 376, § 6.

Amendments. The 2019 amendment rewrote the section heading; in (a), in-

serted the first occurrence of "petition", substituted "file" for "submit", and substituted "with the Secretary of State" for "to the Attorney General, with a proposed legislative or ballot title and popular name"; and rewrote (b) through (d).

RESEARCH REFERENCES

Ark. L. Rev. Nancy Smith, *The Secret Sauce of Ballot Initiative Approval: Eliminating Issues Within Arkansas's Pre-Cir-*

culation Review, 72 Ark. L. Rev. 683 (2020).

CASE NOTES

ANALYSIS

Action by Attorney General.
Effective Date of 2019 Amendment.

Action by Attorney General.

Ballot question committee's request to compel the Attorney General to certify an amendment to the Arkansas Constitution was moot as the Attorney General's certification would have no practical legal effect on the parties because, under the 2019 amendment of this section, sponsors of initiated amendments were no longer required to obtain the Attorney General's certification of popular names and ballot

titles before circulation of an initiative petition. *Ark. True Grass v. Rutledge*, 2019 Ark. 165 (2019).

Effective Date of 2019 Amendment.

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was "to avoid confusion in petition circulation"; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15

months, did not amount to an emergency under Ark. Const., Art. 5, § 1. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376's new requirements were not in effect at the time petitioner filed its proposed referen-

dum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner's referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

7-9-108. Procedure for circulation of petition.

CASE NOTES

ANALYSIS

Constitutionality.

Signatures Disqualified.

Constitutionality.

District court's merits determination rested on the erroneous legal conclusion that the in-person signature and notarization requirements for initiative petitions were subject to strict scrutiny, but neither requirement violated the First Amendment; there had to be some effect on communication of ideas associated with petition circulation, and the voters did not

show the in-person notarization requirement had that effect, and having in-person canvassers was reasonable and non-discriminatory to prevent fraud and mistake. *Miller v. Thurston*, 967 F.3d 727 (8th Cir. 2020).

Signatures Disqualified.

Initiative petition signatures were properly excluded because signatures on petitions that did not list canvassers' true residence addresses were invalid. *Zook v. Martin*, 2018 Ark. 306, 558 S.W.3d 385 (2018).

7-9-109. Form of verification — Penalty for false statement.

(a) Each petition containing signatures shall be verified in substantially the following form by the canvasser's affidavit thereon as a part thereof:

"State of Arkansas

County of _____

I, (print name of canvasser), being duly sworn, state that each of the foregoing persons signed his or her own name to this sheet of the petition in my presence. To the best of my knowledge and belief, each signature is genuine and each signer is a registered voter of the State of Arkansas, _____ County, or City or Incorporated Town of _____. At all times during the circulation of this signature sheet, an exact copy of the popular name, ballot title, and text was attached to the signature sheet. My current residence address is correctly stated below.

Signature _____

Current residence _____

Indicate one: ____ Paid Canvasser ____ Volunteer/Unpaid Canvasser

Subscribed and sworn to before me this ____ day of _____, 20____

Signature _____

Clerk, Notary, Judge, or J.P.

Seal _____".

(b) Forms herein given are not mandatory, and if substantially followed in any petition it shall be sufficient, disregarding clerical and merely technical errors.

(c)(1) Petitions shall not be disqualified due to clerical or technical errors made by a clerk, notary, judge, or justice of the peace when verifying the canvasser's signature.

(2) Petitions shall not be disqualified for failure of a clerk, notary, judge, or justice of the peace to sign exactly as his or her name appears on his or her seal if the signature of a clerk, notary, judge, or justice of the peace is sufficient to verify his or her name.

(d) A canvasser who knowingly makes a false statement on a petition verification form required by this section shall be deemed guilty of a Class D felony.

(e) A canvasser who witnesses signatures on a petition part but knowingly allows another canvasser who did not witness all signatures on a petition part to execute a false verification affidavit with respect to that petition part commits a Class D felony.

(f) A sponsor, sponsor's agent, or representative commits a Class D felony if a sponsor, sponsor's agent, or representative:

(1) Knowingly pays a canvasser for petitioner signatures on a petition part not personally witnessed by that paid canvasser; or

(2) Knowingly submits to the Secretary of State a petition part where the verifying canvasser has not witnessed each signature on that petition part.

History. Acts 1911 (1st Ex. Sess.), No. 2, § 8; C. & M. Dig., § 9769; Pope's Dig., § 13289; A.S.A. 1947, § 2-207; Acts 1989, No. 280, § 4; 1991, No. 42, § 3; 1991, No. 197, § 1; 1997, No. 646, § 6; 2005, No. 1817, § 1; 2013, No. 1413, § 11; 2019, No. 376, § 7; 2021, No. 951, § 2.

Amendments. The 2019 amendment substituted "Current residence" for "Residence" in the form in (a).

The 2021 amendment added (e) and (f).

CASE NOTES

Effective Date of 2019 Amendment.

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was "to avoid confusion in petition circulation"; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. Safe Sur-

gery Ark. v. Thurston, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376's new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner's referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. Safe Surgery Ark. v. Thurston, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

7-9-110. Designation of number and popular name.

(a) The popular name of each state measure shall be the popular name provided by the sponsor under § 7-9-107, and the number of the measure on the ballot shall be designated as provided in § 7-9-116.

(b) In all legal notices and publications affecting a measure, the measure shall be identified by both the designated number and popular name.

History. Acts 1933, No. 71, §§ 1, 2; Pope's Dig., §§ 1772, 1773; A.S.A. 1947, §§ 2-209, 2-214; Acts 1993, No. 512, § 9; 2009, No. 281, § 1; 2013, No. 1413, § 12; 2019, No. 376, § 8.

Amendments. The 2019 amendment substituted "the popular name provided by the sponsor under" for "designated as provided in" in (a).

CASE NOTES

Effective Date of 2019 Amendment.

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was "to avoid confusion in petition circulation"; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. *Safe Sur-*

gery Ark. v. Thurston, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376's new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner's referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

7-9-111. Determination of sufficiency of petition — Corrections.

(a) The Secretary of State shall ascertain and declare the sufficiency or insufficiency of the signatures submitted on each statewide initiative petition and each statewide referendum petition within thirty (30) days after it is filed.

(b) The Secretary of State may contract with the various county clerks for their assistance in verifying the signatures on petitions. The county clerk shall return the petitions to the Secretary of State within ten (10) days.

(c) If the statewide initiative petition or statewide referendum petition is found to be sufficient, the Secretary of State shall certify and record the finding and perform such other duties relating thereto as are required by law.

(d)(1) If the signatures submitted on a statewide initiative petition or statewide referendum petition are found to be insufficient, the Secretary of State shall forthwith notify the sponsors in writing, through their designated agent, and shall set forth his or her reasons for so finding. When the notice is delivered, the sponsors shall have thirty (30) days in which to do any or all of the following:

(A) Solicit and obtain additional signatures; or

(B) Submit proof to show that the rejected signatures or some of them are good and should be counted.

(2) Any amendments and corrections shall not materially change the purpose and effect of the statewide initiative petition or statewide referendum petition. No change shall be made in the measure.

(3) The Secretary of State shall ascertain and declare the sufficiency or insufficiency of additional signatures submitted by the sponsors under this subsection within thirty (30) days of the filing of the supplemental petitions.

(e)(1) To assist the Secretary of State in ascertaining the sufficiency or insufficiency of each statewide initiative petition and each statewide referendum petition, all county clerks shall furnish at cost to the Secretary of State a single alphabetical list of all registered voters in their respective counties. The list shall be provided at least four (4) months before the election, and an updated list shall be provided at cost by September 1 in the year of the election. The list shall include the date of birth of each registered voter.

(2) The State Board of Election Commissioners, upon the request of the county clerk, may grant a waiver from this provision if the board determines that the county clerk is unable to provide the list within the time required.

(f)(1) A person filing statewide initiative petitions or statewide referendum petitions with the Secretary of State shall bundle the petitions by county and shall file an affidavit stating the number of petitions and the total number of signatures being filed.

(2) If signatures were obtained by paid canvassers, the person filing the petitions under this subsection shall also submit the following:

(A) A statement identifying the paid canvassers by name; and

(B) A statement signed by the sponsor indicating that the sponsor:

(i) Provided a copy of the most recent edition of the Secretary of State's initiatives and referenda handbook to each paid canvasser before the paid canvasser solicited signatures; and

(ii) Explained the requirements under Arkansas law for obtaining signatures on an initiative or referendum petition to each paid canvasser before the paid canvasser solicited signatures.

(g) All county initiative and referendum elections shall be held in accordance with the provisions of § 14-14-917.

(h) Municipal referendum petition measures shall be submitted to the electors at a regular general election unless the petition expressly calls for a special election. If the date set by the petition does not allow sufficient time to comply with election procedures, then the city or town council shall fix the date for any special election on the referendum measure. The date of any special election shall be set in accordance with § 7-11-201 et seq. but in no event more than one hundred twenty (120) calendar days after the date of certification of sufficiency by the municipal clerk.

(i)(1) When a statewide initiative petition or statewide referendum petition is submitted to the Secretary of State for determination of the

sufficiency of the signatures, the Secretary of State shall submit the ballot title and popular name of the proposed measure to the board for certification as required by Arkansas Constitution, Article 5, § 1.

(2) The board shall determine whether to certify the ballot title and popular name submitted for a proposed measure within thirty (30) days after the ballot title and popular name are submitted by the Secretary of State under subdivision (i)(1) of this section.

(3) If the board determines that the ballot title and popular name, and the nature of the issue, is presented in a manner that is not misleading and not designed in such a manner that a vote "FOR" the issue would be a vote against the matter or viewpoint that the voter believes himself or herself to be casting a vote for, or, conversely, that a vote "AGAINST" an issue would be a vote for a viewpoint that the voter is against, the ballot title and popular name of the statewide initiative petition or statewide referendum petition shall be certified to the Secretary of State to be placed upon the ballot if the signatures on the statewide initiative petition or statewide referendum petition are determined to be sufficient.

(4)(A) If the board determines that the ballot title or popular name, or the nature of the issue, is presented in such a manner that the ballot title or popular name would be misleading or designed in such manner that a vote "FOR" the issue would be a vote against the matter or viewpoint that the voter believes himself or herself to be casting a vote for, or, conversely, that a vote "AGAINST" an issue would be a vote for a viewpoint that the voter is against, the board of shall:

(i) Not certify the ballot title and popular name;

(ii)(a) Notify the sponsors in writing, through their designated agent, that the ballot title and popular name were not certified and set forth its reasons for so finding.

(b) If the ballot title and popular name are not certified, the sponsor shall not submit a redesigned ballot title or popular name to the board; and

(iii) Notify the Secretary of State that the ballot title and popular name were not certified.

(B) If the ballot title and popular name are not certified under subdivision (i)(4)(A) of this section, the Secretary of State shall declare the proposed measure insufficient for inclusion on the ballot for the election at which the statewide initiative petition or statewide referendum petition would be considered.

History. Acts 1943, No. 195, § 5; A.S.A. 1947, § 2-210; Acts 1989, No. 280, § 5; 1991, No. 1094, § 1; 1991, No. 1153, § 1; 1997, No. 646, § 7; 1997, No. 1145, § 1; 2005, No. 2145, § 15; 2007, No. 1049, § 30; 2009, No. 1480, § 46; 2013, No. 1413, §§ 13-15; 2015, No. 1219, § 2; 2019, No. 376, § 9.

Amendments. The 2019 amendment

redesignated former (a)(1) as (a); inserted "the signatures submitted on" in (a); substituted "statewide initiative petition and each statewide referendum petition" for "initiative and referendum petition" in (a) and made similar changes throughout the section; redesignated former (a)(2) as (b), and deleted former (b); substituted "signatures submitted on a statewide initiative

petition or statewide referendum petition are” for “petition is” in the introductory language of (d)(1); deleted (d)(1)(C); deleted “except to correct apparent typo-

graphical errors or omissions” at the end of (d)(2); added (i); and made stylistic changes.

RESEARCH REFERENCES

Ark. L. Rev. Nancy Smith, The Secret Sauce of Ballot Initiative Approval: Eliminating Issues Within Arkansas’s Pre-Cir-

culation Review, 72 Ark. L. Rev. 683 (2020).

CASE NOTES

Effective Date of 2019 Amendment.

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was “to avoid confusion in petition circulation”; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. *Safe Sur-*

gery Ark. v. Thurston, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376’s new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner’s referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

7-9-112. Right of review.

(a) If the Secretary of State determines that the signatures submitted on a statewide initiative petition or statewide referendum petition are insufficient or the State Board of Election Commissioners does not certify the ballot title or popular name of a proposed measure resulting in the Secretary of State’s finding the proposed measure insufficient, the following persons may petition the Supreme Court to determine if the signatures submitted on the statewide initiative petition or statewide referendum petition are sufficient or if the ballot title or popular name of the proposed measure should be certified:

(1) The sponsor of the statewide initiative petition or statewide referendum petition; or

(2) A registered voter.

(b) The Supreme Court shall act expeditiously to review the sufficiency of the signatures or the certification of the ballot title or popular name in a timely manner and shall make every effort to reach a decision in advance of the election at which the proposed measure would be considered.

(c)(1)(A) If the Supreme Court decides that the signatures submitted on a statewide initiative petition or statewide referendum petition are sufficient, the Supreme Court shall order the Secretary of State to certify the sufficiency for placing the proposed measure on the election ballot if the ballot title and popular name are sufficient.

(B) If the Supreme Court decides that the ballot title and popular name should be certified, the Supreme Court shall order the board to certify the ballot title and popular name to the Secretary of State, who shall declare the proposed measure sufficient to be placed upon the ballot if the signatures on the statewide initiative petition or statewide referendum petition are sufficient.

(2) On a proper showing that the signatures are not sufficient or the ballot title or popular name should not be certified, the Supreme Court may enjoin the Secretary of State from certifying the proposed measure for inclusion on the ballot for the election at which the proposed measure would be considered or, in the event that the proposed measure will appear on the election ballot, from canvassing and certifying the vote on the proposed measure.

History. Acts 1943, No. 195, § 6; A.S.A. 1947, § 2-211; Acts 2013, No. 1413, § 16; 2019, No. 376, § 10.

Amendments. The 2019 amendment rewrote the section heading and the section.

RESEARCH REFERENCES

Ark. L. Rev. Nancy Smith, The Secret Sauce of Ballot Initiative Approval: Eliminating Issues Within Arkansas's Pre-Cir-

culution Review, 72 Ark. L. Rev. 683 (2020).

CASE NOTES

Effective Date of 2019 Amendment.

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was "to avoid confusion in petition circulation"; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. Safe Sur-

gery Ark. v. Thurston, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376's new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner's referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. Safe Surgery Ark. v. Thurston, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

7-9-113. Publication of notice.

(a)(1) The Secretary of State shall be charged with the duty of letting contracts for publishing notices as authorized in this section.

(2)(A) For measures proposed by petition, the petition sponsor shall reimburse the cost of publication to the Secretary of State within thirty (30) calendar days of notification of the final costs for publication.

(B) The Secretary of State shall provide the sponsor of the measure a complete cost breakdown including the:

- (i) Number of locations where the measure was published;
- (ii) Number of times the measure was published;

(iii) Dates the measure was published; and

(iv) Costs for publishing the measure.

(C)(i) The reimbursement shall be placed by the Secretary of State into the Mandatory Publication Reimbursement Fund.

(ii) Funds shall be transferred from time to time from the Mandatory Publication Reimbursement Fund to the State Central Services Fund as refunds for costs associated with mandatory publications.

(b)(1) Before the election at which any proposed or referred measure is to be voted upon by the people, notice shall be published in two (2) weekly issues of some newspaper in each county as is provided by law.

(2)(A) Publication of the notice for amendments proposed by the General Assembly shall commence six (6) months before the election.

(B) Publication of the notice for all other measures shall commence eight (8) weeks before the election.

(c)(1) For amendments proposed by the General Assembly, at least one (1) notice shall:

(A) Contain the number, the popular name, the ballot title, and a complete text of the amendment to be submitted; and

(B) Be published in a camera-ready format in a type no smaller than 10-point type.

(2) For all other proposed measures or amendments, at least one (1) notice shall:

(A) Contain the number, the popular name, and the ballot title of the measure to be submitted;

(B) Reference a website where the full text of the measure is published; and

(C) Be published in a camera-ready format in a type no smaller than 10-point type.

(d) It shall be the duty of the Secretary of State, in connection with notice of the proposed measure, to give notice in the same newspapers that each elector on depositing his or her ballot at the election shall vote for or against the measure.

History. Acts 1879, No. 80, § 6, p. 128; C. & M. Dig., § 1473; Pope's Dig., § 1771; Acts 1943, No. 195, § 7; A.S.A. 1947, §§ 2-212, 2-213; Acts 1991, No. 798, § 1; 1991, No. 1094, § 2; 1991, No. 1153, § 2; 1997, No. 646, § 8; 2017, No. 982, § 1; 2019, No. 898, § 13.

Amendments. The 2019 amendment redesignated (a)(2)(C) as (a)(2)(C)(i); and added (a)(2)(C)(ii).

7-9-119. Counting, canvass, and return of votes — Proclamation of result — Effective date.

CASE NOTES

Mandamus Relief.

Voter demonstrating that a proposed constitutional amendment was unconstitutional was entitled to both declaratory and mandamus relief, as (1) declaratory relief is available whether or not other

relief can be obtained; (2) the Arkansas Supreme Court has routinely ordered the Arkansas Secretary of State to not count or certify any ballots cast for a proposed amendment that does not meet the requirements of the Arkansas Constitution

or Arkansas law; and (3) a voter has a standards set forth by the Arkansas Constitution. *Martin v. Humphrey*, 2018 Ark. constitutional amendments that meet the 295, 558 S.W.3d 370 (2018).

7-9-124. Voter registration signature imaging system — Creation of fund.

(a) There is hereby established in the office of the Secretary of State a voter registration signature imaging system, and the Secretary of State is authorized to acquire and maintain the necessary equipment and facilities to accommodate the system.

(b) The Division of Information Systems shall cooperate with and assist the Secretary of State in determining the computer equipment and software needed in the office of the Secretary of State for the voter registration signature imaging system.

(c) There is hereby created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Voter Registration Signature Imaging System Fund".

History. Acts 1993, No. 1285, §§ 1-3; substituted "Division of Information Systems" for "Department of Information Systems" in (b).
1997, No. 1104, § 1; 2019, No. 910, § 6060.

Amendments. The 2019 amendment

7-9-126. Count of signatures.

(a) Upon the initial filing of an initiative petition or referendum petition, the official charged with verifying the signatures shall:

(1) Perform an initial count of the signatures; and

(2) Determine whether the petition contains, on its face and before verification of the signatures of registered voters, the designated number of signatures required by the Arkansas Constitution and statutory law in order to certify the measure for the election ballot.

(b) A petition part and all signatures appearing on the petition part shall not be counted for any purpose by the official charged with verifying the signatures, including the initial count of signatures, if one (1) or more of the following is true:

(1) The petition is not an original petition, including without limitation a petition that is photocopied or is a facsimile transmission;

(2) The petition does not conform to the original draft filed under § 7-9-107;

(3) The petition lacks the signature, printed name, and residence address of the canvasser or is signed by more than one (1) canvasser;

(4)(A) The canvasser is a paid canvasser whose name and the information required under § 7-9-601 were not submitted or updated by the sponsor to the Secretary of State before the petitioner signed the petition.

(B) A canvasser is a paid canvasser if he or she is paid money or anything of value for soliciting signatures before or after the signatures are obtained;

(5) The canvasser verification:

(A) Is not notarized;

- (B) Is notarized by more than one (1) notary;
 - (C) Lacks a notary signature or a notary seal; or
 - (D) Lacks a legible notary signature or a legible notary seal;
- (6) The canvasser verification is dated earlier than the date on which a petitioner signed the petition;

(7) The petition fails to comply with § 7-9-104 or § 7-9-105, including the lack of the exact popular name or ballot title for a statewide initiative, a discrepancy in the text of the initiated or referred measure, or the lack of an enacting clause in a statewide petition for an initiated act; or

(8) The petition part has a material defect that, on its face, renders the petition part invalid.

(c) The following signatures shall not be counted for any purpose by the official charged with verifying the signatures, including the initial count of signatures:

- (1) A signature that is not an original signature;
- (2) A signature that is obviously not that of the purported petitioner;
- (3) A signature that is illegible;
- (4) A signature that is not accompanied by personally identifying information;

(5) A signature for which the corresponding printed name, address, birth date, or date of signing is written by someone other than the signer except under circumstances of disability of the signer;

(6) A signature obtained before the filing of the original draft for circulation under § 7-9-107; and

(7) A signature that has any other material defect that, on its face, renders the signature invalid.

(d) If the initial count of signatures under this section is less than the designated number of signatures required by the Arkansas Constitution and statutory law in order to certify the measure for the ballot and the deadline for filing petitions has passed, the official charged with verifying the signatures shall declare the petition insufficient and shall not accept and file any additional signatures to cure the insufficiency of the petition on its face.

History. Acts 2013, No. 1413, § 18; 2015, No. 1219, § 3; 2019, No. 376, § 11.

Amendments. The 2019 amendment inserted the first occurrence of "petition" in the introductory language of (a); inserted (b)(2) and redesignated the remaining subdivisions accordingly; inserted "or updated" in (b)(4)(A); redesignated part of

(b)(5) as (b)(5)(A) through (b)(5)(C); added (b)(5)(D); deleted "approved by the Attorney General" following "ballot title" in (b)(7); redesignated part of (c)(3) as (c)(4); redesignated former (c)(4) as (c)(5); inserted "or date of signing" in (c)(5); inserted (c)(6); redesignated former (c)(5) as (c)(7); and made stylistic changes.

CASE NOTES

ANALYSIS

Effective Date of 2019 Amendment.
Signatures Disqualified.

Effective Date of 2019 Amendment.

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was “to avoid confusion in petition circulation”; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019,

No. 376 was ineffective and Act 376’s new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner’s referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

Signatures Disqualified.

Initiative petition signatures were properly excluded because signatures on petitions that did not list canvassers’ true residence addresses were invalid. *Zook v. Martin*, 2018 Ark. 306, 558 S.W.3d 385 (2018).

Cited: *Arkansans for Healthy Eyes v. Thurston*, 2020 Ark. 270 (2020).

SUBCHAPTER 2 — LEGISLATIVE PROPOSAL OF CONSTITUTIONAL AMENDMENTS

SECTION.

7-9-205. Challenges to constitutional amendments proposed by the General Assembly.

Effective Dates. Acts 2019, No. 376, § 14: Mar. 8, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act amends the process for circulating initiative petitions and referendum petitions; and that the provisions of this act should become effective immediately so that its provisions apply to all petitions circulated after the passage of the act to avoid confusion in petition circulation. Therefore, an emergency is declared to exist, and this act being immedi-

ately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.” The emergency clause for Acts 2019, No. 376 was held to be defective in *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403.

7-9-205. Challenges to constitutional amendments proposed by the General Assembly.

If the General Assembly passes a joint resolution proposing an amendment to the Arkansas Constitution, a qualified elector may file an action in a court of competent jurisdiction at any time after the

passage of the joint resolution challenging the sufficiency of the joint resolution, including without limitation the:

- (1) Text of the proposed amendment;
- (2) Ballot title of the proposed amendment; and
- (3) Popular name of the proposed amendment.

History. Acts 2019, No. 376, § 12.

CASE NOTES

ANALYSIS

Ballot Title Challenges.
Effective Date.

Ballot Title Challenges.

Ark. Const., Art. 19, § 22, governed the ballot titles of two ballot issues concerning term limits as nothing in the plain language of Acts 2019, No. 376, which enacted this section, expressly stated that a constitutional amendment proposed by the General Assembly had to be reviewed under Ark. Const., Art. 5, § 1 ("Amendment 7"). *Steele v. Thurston*, 2020 Ark. 320, 609 S.W.3d 357 (2020).

Effective Date.

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was "to avoid confusion in petition circulation"; Act 376 added additional requirements for getting a referendum on the

election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376's new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner's referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

SUBCHAPTER 6 — PAID CANVASSERS

SECTION.

7-9-601. Hiring and training of paid canvassers — Definitions.

Effective Dates. Acts 2019, No. 376, § 14: Mar. 8, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act amends the process for circulating initiative petitions and referendum petitions; and that the provisions of this act should become effective immediately so that its provisions apply to all petitions circulated after the passage of the act to avoid confusion in petition circulation. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the

public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto." The emergency clause for Acts 2019, No. 376 was held to be defective in *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403.

Acts 2021, No. 951, § 9: Apr. 27, 2021. Emergency clause provided: "It is found

and determined by the General Assembly of the State of Arkansas that petition canvassers in the State of Arkansas have been approaching Arkansas voters without first passing the required criminal history and criminal record searches; that the use of canvassers who have not passed criminal history and criminal record searches poses a threat to the health and safety of voters who may give personal information to canvassers with disqualifying offenses; that this act protects voters from criminal canvassers; and that this act is immediately necessary because the Supreme Court's decision in *Thurston v. Safe Surgery Arkansas*, 2021 Ark. 55, has

invalidated the current version of § 7-9-601, leaving voters with inadequate protections from criminal canvassers. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

7-9-601. Hiring and training of paid canvassers — Definitions.

(a)(1) A person shall not provide money or anything of value to another person for obtaining signatures on a statewide initiative petition or statewide referendum petition unless the person receiving the money or item of value meets the requirements of this section.

(2) Before a signature is solicited by a paid canvasser the sponsor shall:

(A) Provide the paid canvasser with a copy of the most recent edition of the Secretary of State's initiatives and referenda handbook;

(B) Explain the Arkansas law applicable to obtaining signatures on an initiative or referendum petition to the canvasser;

(C)(i) Provide a complete list of all paid canvassers' names and current residential addresses to the Secretary of State.

(ii) If additional paid canvassers agree to solicit signatures on behalf of a sponsor after the complete list is provided, the sponsor shall provide an updated list of all paid canvassers' names and current residential addresses to the Secretary of State;

(D) Submit to the Secretary of State a copy of the signed statement provided by the paid canvasser under subdivision (d)(3) of this section;

(E) Instruct the paid canvasser to provide the sponsor sufficient information of the paid canvasser's identity to allow the sponsor to obtain the criminal history and criminal record of the paid canvasser within thirty (30) days before the date that the paid canvasser begins collecting signatures;

(F) Obtain the criminal history and criminal record of the paid canvasser; and

(G) Contact the appropriate authority in the state or jurisdiction if a paid canvasser's criminal history and criminal record indicate an open or pending criminal charge that constitutes a disqualifying offense to determine the ultimate disposition or current status of the charge.

(3) Upon filing the petition with the Secretary of State, the sponsor shall submit to the Secretary of State a:

(A) Final list of the names and current residential addresses of each paid canvasser; and

(B) Signature card for each paid canvasser.

(b)(1) To verify that there are no disqualifying offenses on record, a sponsor shall obtain, at the sponsor's cost, from the Division of Arkansas State Police, a current state criminal history and criminal record search on every paid canvasser to be registered with the Secretary of State.

(2) The criminal history and criminal record search required by this section shall be obtained within thirty (30) days before the date that the paid canvasser begins collecting signatures.

(3) Upon submission of the sponsor's list of paid canvassers to the Secretary of State, the sponsor shall certify to the Secretary of State that each paid canvasser in the sponsor's employ has no disqualifying offenses in accordance with this section.

(4) A willful violation of this section by a sponsor or paid canvasser constitutes a Class A misdemeanor.

(5) The sponsor shall bear the ultimate burden of proving that a paid canvasser registered by the sponsor does not have a disqualifying offense in an administrative proceeding or judicial proceeding.

(c) As used in this section, "paid canvasser" means a person who is paid or with whom there is an agreement to pay money or anything of value before or after a signature on an initiative or referendum petition is solicited in exchange for soliciting a signature on a petition.

(d) Before obtaining a signature on an initiative or referendum petition as a paid canvasser, the prospective canvasser shall submit in person or by mail to the sponsor:

(1) The full name and any assumed name of the person;

(2) The current residence address of the person and the person's permanent domicile address if the person's permanent domicile address is different from the person's current residence address;

(3)(A) A signed statement taken under oath or solemn affirmation stating that the person has not pleaded guilty or nolo contendere to or been found guilty of a disqualifying offense in any state of the United States, the District of Columbia, Puerto Rico, Guam, or any other United States protectorate.

(B) As used in this section, "disqualifying offense" means:

(i) A felony;

(ii) A violation of the election laws;

(iii) Fraud;

(iv) Forgery;

(v) Counterfeiting;

(vi) Identity theft;

(vii) A crime of violence, including assault, battery, or intimidation;

(viii) Harassment;

- (ix) Terroristic threatening;
- (x) A sex offense, including sexual harassment;
- (xi) A violation of the drug and narcotics laws;
- (xii) Breaking and entering;
- (xiii) Trespass;
- (xiv) Destruction or damage of property;
- (xv) Vandalism;
- (xvi) Arson; or
- (xvii) A crime of theft, including robbery, burglary, and simple theft or larceny;

(4) A signed statement that the person has read and understands the Arkansas law applicable to obtaining signatures on an initiative or referendum petition; and

(5) A signed statement that the person has been provided a copy of the most recent edition of the Secretary of State's initiatives and referenda handbook by the sponsor.

(e) A sponsor shall maintain the information required under this section for each paid canvasser for three (3) years after the general election.

(f) Signatures incorrectly obtained or submitted under this section shall not be counted by the Secretary of State for any purpose.

(g)(1) It is unlawful for a person to pay or offer to pay a person, or receive payment or agree to receive payment, on a basis related to the number of signatures obtained on a statewide initiative petition or statewide referendum petition.

(2) This subsection does not prohibit compensation for circulating petitions but only compensation for obtaining signatures when the compensation or compensation level is impacted by or related to the number of signatures obtained.

(3) A signature obtained in violation of this subsection is void and shall not be counted.

(4) A violation under this subsection is a Class A misdemeanor.

History. Acts 2013, No. 1413, § 21; 2015, No. 1219, § 4; 2017, No. 1104, § 6; 2019, No. 376, § 13; 2021, No. 951, §§ 3-7.

Amendments. The 2019 amendment, in (a)(1), inserted the first occurrence of "petition" and inserted the second occurrence of "statewide"; added (a)(2)(D); redesignated (b)(5) as (f); and added "for any purpose" in (f).

The 2021 amendment added (a)(2)(E) through (a)(2)(G); in (b)(1), substituted "disqualifying" for "criminal" and substi-

tuted "criminal history and" for "and federal"; in (b)(2), inserted "criminal history and" and inserted "required by this section"; substituted "no disqualifying offenses" for "passed a criminal background check" in (b)(3); added (b)(5); deleted "or obtaining" following "soliciting" in (c); redesignated (d)(3) as (d)(3)(A); in (d)(3)(A), substituted "disqualifying offense" for "criminal felony offense or a violation of the election laws, fraud, forgery, or identification theft"; and added (d)(3)(B) and (g).

RESEARCH REFERENCES

ALR. State Constitutional Right of Freedom to Assembly Provisions. 41 A.L.R.7th Art. 7 (2019).

CASE NOTES

ANALYSIS

Constitutionality.
Background Checks on Canvassers.
Compliance.
Effective Date of 2019 Amendment.
Signatures Disqualified.

Constitutionality.

Under precedent, the term “current residence address” as used in this section was not unconstitutionally vague because, when juxtaposed with “permanent domicile address”, the phrase was sufficiently clear. *Zook v. Martin*, 2018 Ark. 306, 558 S.W.3d 385 (2018).

Because subdivisions (b)(1) and (b)(3) of this section were impossible to comply with, the circuit court did not abuse its discretion in determining a ballot question committee demonstrated a likelihood of success on the merits in its action alleging the statute was unconstitutional. *Thurston v. Safe Surgery Ark.*, 2021 Ark. 55, 619 S.W.3d 1 (2021) (decision under law before 2021 amendment).

Background Checks on Canvassers.

Petition sponsors were not entitled to a preliminary and permanent injunction requiring the Secretary of State to count the subject petitions’ signatures and provide a “cure period” of at least 30 days because the petitions were insufficient; the sponsors did not comply with the statutory requirements when they failed to certify that their paid canvassers had passed criminal background checks — state or federal. *Miller v. Thurston*, 2020 Ark. 267, 605 S.W.3d 255 (2020).

Construing subdivision (b)(1) of this section just as it reads, it is clear that the federal background check is to be obtained from the Division of Arkansas State Police, and this is impossible; because subdivision (b)(3) requires the sponsor to certify that the impossible requirement contained in subdivision (b)(1) has been satisfied, it follows that compliance with subdivision (b)(3) is likewise impossible.

Thurston v. Safe Surgery Ark., 2021 Ark. 55, 619 S.W.3d 1 (2021) (decision under law before 2021 amendment).

Given the impossibility of complying with subdivision (b)(1) of this section, subdivision (b)(3)’s requirement that the sponsor shall certify to the Secretary of State that each paid canvasser in the sponsor’s employ has passed a criminal background check in accordance with this section is likewise impossible. *Thurston v. Safe Surgery Ark.*, 2021 Ark. 55, 619 S.W.3d 1 (2021) (decision under law before 2021 amendment).

Circuit court did not abuse its discretion in determining that a ballot question committee demonstrated that irreparable harm would result in the absence of an injunction because the committee could not begin the initiative process for the election cycle; the impossible requirements found in subdivisions (b)(1) and (b)(3) of this section prevented the committee from registering any paid canvassers. *Thurston v. Safe Surgery Ark.*, 2021 Ark. 55, 619 S.W.3d 1 (2021) (decision under law before 2021 amendment).

Preliminary injunction finding that the entirety of subsection (b) of this section was unconstitutional was not overbroad; because all of the subdivisions in subsection (b) are related to the criminal background check, they are interrelated and dependent on each other. *Thurston v. Safe Surgery Ark.*, 2021 Ark. 55, 619 S.W.3d 1 (2021) (decision under law before 2021 amendment).

Compliance.

Certification language of a ballot-question committee, under which signatures were counted by the Secretary of State as valid, failed to certify that the paid canvassers had passed a criminal background check. Thus, under a strict compliance analysis, the ballot-question committee’s statewide initiative petition was insufficient as it did not comply with the statutory requirements. *Arkansans for Healthy Eyes v. Thurston*, 2020 Ark. 270 (2020).

Effective Date of 2019 Amendment.

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was "to avoid confusion in petition circulation"; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376's new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner's referendum filings (seeking a referendum on Acts

2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

Signatures Disqualified.

Initiative petition signatures gathered by two canvassers were invalid because the canvassers did not execute sworn statements before collecting signatures as paid canvassers. *Zook v. Martin*, 2018 Ark. 306, 558 S.W.3d 385 (2018).

Initiative petition signatures were not counted because the sponsor did not timely file a list of paid canvassers with the Secretary of State, as a list that was timely filed was password protected and therefore inaccessible. *Zook v. Martin*, 2018 Ark. 306, 558 S.W.3d 385 (2018).

Initiative petition signatures were excluded because the canvasser who gathered the signatures had a felony conviction. *Zook v. Martin*, 2018 Ark. 306, 558 S.W.3d 385 (2018).

CHAPTER 10**NONPARTISAN ELECTIONS****SECTION.**

7-10-103. Filing as a candidate.

7-10-103. Filing as a candidate.

(a) A candidate for a nonpartisan office under this chapter shall:

- (1) Pay a filing fee;
- (2) File a petition; or
- (3) File as a write-in candidate.

(b)(1) The State Board of Election Commissioners shall establish reasonable filing fees for nonpartisan offices.

(2)(A) A candidate for the office of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, or prosecuting attorney who chooses to pay by filing fee shall pay the filing fee to the Secretary of State when the candidate files his or her political practices pledge.

(B) The period for paying filing fees and filing political practices pledges shall begin at 3:00 p.m. on the first day of the party filing period under § 7-7-203 and shall end at 3:00 p.m. on the last day of the party filing period under § 7-7-203.

(3)(A) The filing fees collected for the offices of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, and district judge shall be remitted to the Treasurer of State for deposit into the Nonpartisan Filing Fee Fund for covering the cost of election expenses of the State Board of Election Commissioners.

(B)(i) Except as provided in subdivision (b)(3)(B)(ii) of this section, the filing fees collected for the office of prosecuting attorney shall be remitted to the Treasurer of State for deposit into the Nonpartisan Filing Fee Fund.

(ii) The first one hundred thousand dollars (\$100,000) collected annually from filing fees for the office of prosecuting attorney shall be remitted to the Treasurer of State for deposit into the Trial Court Administrator Fund.

(c)(1)(A)(i) A person may have his or her name placed on the ballot for a nonpartisan office without paying a filing fee by filing a petition in the manner provided for under this section. A petition for a candidate for the office of Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, or prosecuting attorney shall be filed with the Secretary of State beginning at 12:00 noon fifty-three (53) days before the first day of the party filing period under § 7-7-203 and ending at 12:00 noon forty-six (46) days before the first day of the party filing period under § 7-7-203.

(ii) A nonpartisan candidate filing by petition shall file a political practices pledge with the petition.

(B)(i) The petition shall:

(a) Be directed to the office with which it is to be filed; and

(b) Request that the name of the candidate be placed on the ballot for the election set forth in the petition.

(ii) A candidate shall not begin circulating petitions earlier than sixty (60) days before the filing deadline.

(C)(i) The Secretary of State within forty-five (45) days of the filing of the petition shall:

(a) Determine whether the petition contains the names of a sufficient number of qualified electors; and

(b) Verify the sufficiency of the petition.

(ii) The sufficiency of a petition filed under this section may be challenged in the same manner as provided by law for election contests under § 7-5-801 et seq.

(D) A qualified elector signing the petition must be a registered voter in the geographic area applicable to the position at the time he or she signs the petition. Each qualified elector shall provide on the petition his or her:

(i) Printed name;

(ii) Signature;

(iii) Address;

(iv) Date of birth; and

(v) Date of signing.

(E) In determining the number of qualified electors in the state or in any court of appeals district, circuit court circuit, or district court district, the number of votes cast for Governor in the immediately preceding general gubernatorial election shall be conclusive of the number of all qualified electors in the state, circuit, or district for purposes of this section.

(2)(A) A candidate by petition for Justice of the Supreme Court shall file a petition signed by the lesser of:

(i) Three percent (3%) of the qualified electors residing within the state; and

(ii) Ten thousand (10,000) qualified electors.

(B) A candidate by petition for Judge of the Court of Appeals shall file a petition signed by the lesser of:

(i) Three percent (3%) of the qualified electors residing within the court of appeals district for which the candidate seeks office; and

(ii) Two thousand (2,000) qualified electors.

(C) A candidate by petition for circuit judge shall file a petition signed by the lesser of:

(i) Three percent (3%) of the qualified electors residing within the circuit for which the candidate seeks office; and

(ii) Two thousand (2,000) qualified electors.

(D) A candidate by petition for district judge shall file a petition signed by the lesser of:

(i) One percent (1%) of the qualified electors residing within the district for which the candidate seeks office; and

(ii) Two thousand (2,000) qualified electors.

(E) A candidate by petition for prosecuting attorney shall file a petition signed by the lesser of:

(i) Three percent (3%) of the qualified electors residing within the district for which the candidate seeks office; and

(ii) Two thousand (2,000) qualified electors.

(d)(1) Votes for a write-in candidate in a nonpartisan election shall not be counted or tabulated unless the candidate or his or her agent gives notice in writing of his or her intention to be a write-in candidate to:

(A) All county boards of election commissioners in the judicial district; and

(B) The Secretary of State.

(2) The written notice shall be given no later than eighty (80) days before the nonpartisan election.

(3) A write-in candidate shall file a political practices pledge at the same time as filing a notice of intention.

(e) A candidate for Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, or prosecuting attorney shall file with the Secretary of State.

(f)(1)(A) A nonpartisan candidate shall not use more than three (3) given names, one (1) of which may be a nickname or another word used to identify the candidate to the voters.

(B)(i) A nonpartisan candidate may add as a prefix to his or her name the title or an abbreviation of an elective public office the candidate currently holds.

(ii) A candidate may use as the prefix the title of a nonpartisan judicial office in an election for a nonpartisan judicial office only if:

(a) The candidate is currently serving in a judicial position to which the candidate has been elected in the last election for the office; or

(b) The candidate:

(1) Is a candidate for the office of circuit judge or district judge;

(2) Is currently serving in the position of circuit judge or district judge as an appointee; and

(3) Has been serving in that position for at least twelve (12) months.

(C) A nickname shall not include a professional or honorary title.

(2) The person filing for office shall include his or her surname in addition to any given names permitted under subdivision (f)(1)(A) of this section.

(3) The names and titles to be used by a candidate on the political practices pledge shall be reviewed no later than one (1) business day after the filing deadline by the Secretary of State for a candidate for Justice of the Supreme Court, Judge of the Court of Appeals, circuit judge, district judge, and prosecuting attorney.

(4)(A) The name of each candidate shall be printed on the ballot in the form as certified by the Secretary of State.

(B) The county board of election commissioners may substitute an abbreviated title if the ballot lacks space for the title requested by a candidate.

(C) The county board of election commissioners immediately shall notify a candidate whose requested title is abbreviated by the county board of election commissioners.

(5) A candidate shall not change the form in which his or her name will be printed on the ballot after the deadline for filing the political practices pledge.

History. Acts 2001, No. 1789, § 3; § 1; 2015, No. 268, § 13; 2019, No. 527, 2005, No. 67, § 26; 2007, No. 1049, § 32; § 2.
2009, No. 959, § 45; 2009, No. 1407, §§ 1, 2; 2011, No. 1185, § 14; 2013, No. 1075, § 2; 2013, No. 1110, § 12; 2013, No. 1286,

Amendments. The 2019 amendment inserted (f)(2), and redesignated the remaining subdivisions accordingly.

CASE NOTES

Remedies.

Although, contrary to this section, an appointed district court judge who had filed as a candidate for the Court of Appeals erroneously used the title “Judge” in her signature of the political practices pledge, this section did not restrict courts

from ordering a change on the ballot and current law only sanctioned those who did not sign the pledge; there was no penalty for those found to have included inaccurate information on the pledge. *Barrett v. Thurston*, 2020 Ark. 36, 593 S.W.3d 1 (2020).

CHAPTER 11

SPECIAL ELECTIONS

SUBCHAPTER.

1. ELECTIONS TO FILL VACANCIES.
2. SPECIAL ELECTIONS ON MEASURES AND QUESTIONS.

SUBCHAPTER 1 — ELECTIONS TO FILL VACANCIES

SECTION.

7-11-105. Special elections to be held on the second Tuesday of a month — Exceptions — Separate ballots. [Effective January 1, 2022.]

Effective Dates. Acts 2021, No. 610,
§ 41: Jan. 1, 2022.

7-11-105. Special elections to be held on the second Tuesday of a month — Exceptions — Separate ballots. [Effective January 1, 2022.]

(a)(1) Except as provided in this chapter, all special elections to fill vacancies in office and associated special primary elections shall be held on the second Tuesday of:

(A) March, May, August, or November in a year when a presidential election is held; and

(B) February, May, August, or November of all other years.

(2) Elections called by proclamation of the Governor may be called in any month.

(b) A special election scheduled to occur in a month in which the second Tuesday of the month is a legal holiday shall be held on the third Tuesday of the month.

(c)(1) Special elections held in months in which a preferential primary election or general election is scheduled to occur shall be held on the date of the preferential primary election or general election.

(2) If a special election to fill a vacancy in office is held on the date of the preferential primary election, the names of the candidates in the special election shall be included on the ballot of each political party, and the portion of the ballot on which the special election appears shall be labeled with a heading stating “SPECIAL ELECTION FOR _____” with the name of the office set out in the heading.

(3) Separate ballots containing the names of the candidates to be voted on at the special election or nonpartisan election and any other measures or questions that may be presented for a vote shall be prepared and made available to voters requesting a separate ballot.

(4)(A) A voter shall not be required to vote in a political party's preferential primary election in order to be able to vote in the special election.

(B)(i) If the special election is held at the same time as the general election, the names of the candidates in the special election shall be included on the general election ballot, and the portion of the ballot on which the special election appears shall be labeled with a heading stating "SPECIAL ELECTION FOR _____" with the name of the office set out in the heading.

(ii) The county board of election commissioners may include the special election on a separate ballot if the special election is held at the same time as the general election and the county board of election commissioners determines that a separate ballot is necessary to avoid voter confusion.

(d) A special election to fill a vacancy in office shall be held not less than seventy (70) days following the date established in the proclamation, ordinance, resolution, order, or other authorized document for drawing for a ballot position.

History. Acts 2009, No. 1480, § 47; 2011, No. 1185, § 15; 2013, No. 1110, § 13; 2017, No. 1088, § 2; 2021, No. 610, § 8.

Publisher's Notes. For text of section effective until January 1, 2022, see the bound volume.

Amendments. The 2021 amendment rewrote (a); in (c)(1), deleted "general pri-

mary election" preceding "or general election is scheduled" and following "on the date of the"; deleted "or general primary election" following "preferential primary election" in (c)(2) and (c)(4)(A); and rewrote (d).

Effective Dates. Acts 2021, No. 610, § 41: Jan. 1, 2022.

SUBCHAPTER 2 — SPECIAL ELECTIONS ON MEASURES AND QUESTIONS

SECTION.

7-11-201. Calling special elections on measures or questions.
[Effective January 1, 2022.]

7-11-205. Dates of special elections on measures and questions — Exceptions — Separate ballots. [Effective January 1, 2022.]

Effective Dates. Acts 2021, No. 610, § 41: Jan. 1, 2022.

**7-11-201. Calling special elections on measures or questions.
[Effective January 1, 2022.]**

All special elections on measures or questions referred to the voters by governmental entities as authorized by law shall be called by proclamation, ordinance, statute, resolution, order, or other authorized document of the properly constituted authority as required by law.

History. Acts 2009, No. 1480, § 47; 2021, No. 610, § 9.

Publisher's Notes. For text of section effective until January 1, 2022, see the bound volume.

Amendments. The 2021 amendment deleted "Except for special school elections" at the beginning of the section.

Effective Dates. Acts 2021, No. 610, § 41: Jan. 1, 2022.

**7-11-205. Dates of special elections on measures and questions
— Exceptions — Separate ballots. [Effective January 1, 2022.]**

(a)(1) Except as provided in subdivision (a)(2) of this section, all special elections on measures or questions referred to the voters by governmental entities as authorized by law shall be held on the second Tuesday of:

(A) March, May, August, or November in a year when a presidential election is held; and

(B) February, May, August, or November of all other years.

(2)(A) Special elections scheduled to occur in a month in which the second Tuesday is a legal holiday shall be held on the third Tuesday of the month.

(B) Special elections held in months in which a preferential primary election or general election is scheduled to occur shall be held on the date of the preferential primary election or general election.

(C) A special election on a measure or question may be scheduled on the second Tuesday of a month, other than the months provided in subdivision (a)(1) of this section, if necessary to comply with the requirements of Arkansas Constitution, Article 5, § 1.

(D) An emergency special election may be held on the second Tuesday of any month, other than the month following a preferential primary election or general election, when two-thirds (2/3) of all the members elected to the governing entity have determined that:

(i) An event has occurred that constitutes a substantial change in circumstances; and

(ii) A delay of the emergency special election until the next date under this section would cause a substantial and undue hardship to the governing entity or a threat to the public peace, health, and safety.

(E)(i) A qualified elector for an emergency special election may file an action in the circuit court of the county in which the document calling for the emergency special election is filed to ask the court to determine if circumstances exist that permit the governing entity to

call an emergency special election under subdivision (a)(1)(D) of this section.

(ii) If the court determines circumstances do not exist that permit the governing entity to call an emergency special election:

(a) The emergency special election shall not occur; or

(b) If the emergency special election has already occurred, any measure approved in the emergency special election shall be void.

(iii) A challenge filed under subdivision (a)(1)(E)(i) of this section may not be filed more than thirty (30) days from the date the document calling for the special election being challenged is filed with the county clerk.

(3)(A) If a special election is held on the date of the preferential primary election, the issue or issues to be voted upon at the special election shall be included on the ballot of each political party.

(B) The portion of the ballot containing the special election shall be labeled with a heading stating "SPECIAL ELECTION ON _____" with a brief description of the measure or question to be decided in the election.

(4) Separate ballots containing the issue or issues to be voted on at the special election and candidates for nonpartisan judicial office shall be prepared and made available to voters requesting a separate ballot.

(5) A voter shall not be required to vote in a political party's preferential primary in order to be able to vote in the special election.

(b) A special election shall be held not less than seventy (70) days following the date that the proclamation, ordinance, resolution, order, or other authorized document is filed with the county clerk.

History. Acts 2009, No. 1480, § 47; 2011, No. 1185, § 16; 2017, No. 1088, § 4; 2021, No. 610, § 10.

Publisher's Notes. For text of section effective until January 1, 2022, see the bound volume.

Amendments. The 2021 amendment

rewrote former (a)(1)(A) and redesignated it as (a)(1); redesignated former (a)(1)(B) as (a)(2)(A); added (a)(2)(B) through (a)(2)(E); redesignated former (a)(2)-(4) as (a)(3)-(5); and rewrote (b).

Effective Dates. Acts 2021, No. 610, § 41: Jan. 1, 2022.

